

# GROUND RENTS IN MARYLAND.





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GROUND RENTS  
IN MARYLAND;  
WITH  
AN INTRODUCTION CONCERNING THE  
TENURE OF LAND UNDER THE PROPRIETARY.

BY  
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<sup>111</sup>  
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WITH AN ARTICLE ON MANORS IN MARYLAND BY JOHN JOHNSON,  
JR., AND THE RECORD OF THE COURT-BARON AND COURT-  
LEET OF ST. CLEMENT'S MANOR, REPRINTED FROM  
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## PREFACE.

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A treatise on Ground Rents in Maryland, a form of investment peculiar to this State, and which is now attracting a good deal of attention, it was thought, might prove acceptable to lawyers, students of law, investigators of local institutions, and to those who, from a business point of view or otherwise, might be interested in the matter.

The undersigned has accordingly written this little book, in the hope that it may serve its purpose of furnishing definite information on the subject in question.

As speculation on the origins of all things is now in vogue, an undertaking of this sort would be incomplete, if it did not offer some suggestions as to the origin of our system of ground rents. It was, therefore, necessary to make Lord Baltimore's Charter the starting point of the historico-legal portion of the work. From that instrument the tenure of land under the Proprietary is traced and explained; the evolution of ground rents out of that tenure is then shown, and reasons are assigned why they happened to assume their present form.

The plan pursued in considering ground rents, was to divide the subject under such heads as were suggested by the form of the renewable lease for ninety-nine

years, present under each head the appropriate rules of law in this branch of jurisprudence, and follow with decisions of our Court of Appeals as illustrations of the application of those rules.

The aim and endeavor have been to produce a handy book containing an accurate and reliable statement of the Law of Ground Rents in Maryland. Whether the effort has been successful, must depend on the judgment of the profession.

The article by Mr. Johnson, the scion of a family of eminent Maryland lawyers, and the Record of St. Clement's Manor, in the Appendix, throw much light on the history of manors in the times of the Province.

LEWIS MAYER.

# CONTENTS.

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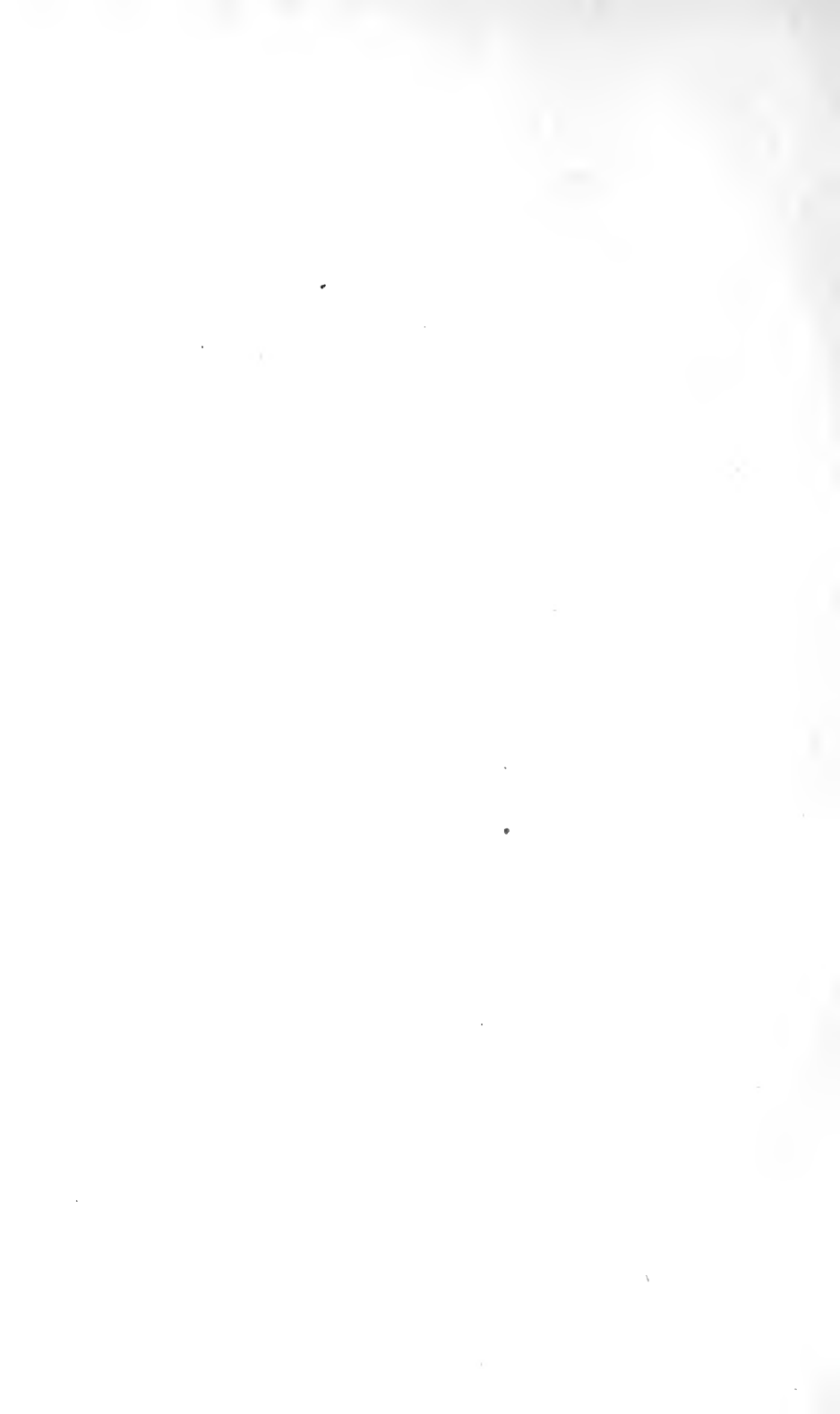
TENURE OF LAND UNDER THE PROPRIETARY .	9
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## GROUND RENTS IN MARYLAND:

I. ORIGIN OF LEASES FOR NINETY-NINE YEARS RENEWABLE FOREVER . . . . .	43
II. FORM OF THE LEASE . . . . .	51
III. SUB-LEASES . . . . .	58
IV. ESTATE OF THE LESSOR . . . . .	62
V. ESTATE OF THE LESSEE . . . . .	66
VI. RELATION OF LANDLORD AND TENANT . . .	74
VII. TAXES . . . . .	94
VIII. DISTRESS, RE-ENTRY AND ACTIONS ON COVE- NANTS . . . . .	99
IX. REDEEMABLE GROUND RENTS . . . . .	120
X. PROHIBITION IN FUTURE OF IRREDEEMABLE GROUND RENTS . . . . .	127

## APPENDIX :

OLD MANORS IN MARYLAND . . . . .	137
RECORD OF THE COURT-BARON AND COURT-LEET OF ST. CLEMENT'S MANOR . . . . .	151



THE TENURE OF LAND UNDER THE  
PROPRIETARY.



## THE CHARTER.

The source of the tenure of land in Maryland is the charter from Charles I., granting, on the 20th of June, 1632, to Cecil, the second Baron of Baltimore, the territory included within the limits of this State. By virtue of this charter, Lord Baltimore became the owner of the soil of Maryland—literally “monarch of all he *surveyed*”—absolute lord and proprietary of the province and the head of its government, standing in *loco regis*.

The charter, after granting, with great particularity of description, the lands and waters of the region (erected by it into a province by the name of Maryland), and all things contained in them and jurisdiction over them, to the Baron of Baltimore, his heirs and assigns, declared that he should have such authority as the Bishop of Durham ever had within the county palatine of Durham. A county palatine was so called in the English law because, as Blackstone explains, the owner thereof had royal rights as fully as the King had in his palace (*in palatio*). The grant, by thus referring to the greatest privileges that had ever been enjoyed by a subject, conferred powers of the highest nature. These powers are further declared in other parts of the char-

ter ; such as, to enact laws with the advice, assent and approbation of the freemen of the province, or of their deputies or delegates, to be called together for the framing of laws (in point of fact the Assembly passed the laws, and the proprietary approved or vetoed them without being required to submit them to the King or his privy council) ; to establish courts ; to preserve the peace of the province and secure good government ; to remit and pardon crimes and offences ; to exact military duty from the inhabitants of the province and wage war against its enemies ; to confer favors, rewards and honors, and award titles and dignities ; and to enjoy the taxes and subsidies payable in the ports, harbors and creeks within the province, for wares bought and sold, laden or unladen. It was also provided that the Crown should never impose any taxes within the limits of the province. This was equivalent to a disclaimer on the part of the English government of the right of taxing the colony ; taxes, nevertheless, were afterwards imposed, in spite of the charter immunity.

What we are especially concerned with, however, are the powers contained in the eighteenth section of the charter, which granted to the Baron of Baltimore, his heirs and assigns, full and absolute authority to assign, alien, grant, demise or enfeoff the lands of the province in fee simple or fee tail, or for term of life, lives or years ; his grantees, "to hold of the Baron of Baltimore, his heirs and assigns, by so many, such and so great services, customs and rents," in free and common socage, as to the Baron of Baltimore



should seem fit and agreeable, and not immediately of the King.

This section, by a *non-obstante* clause, also provided that the statute of *Quia Emptores Terrarum* (18 Edw. I, c. 1) should not apply to the proprietary and his immediate grantees. Kilty's Landholder's Assistant, 28. This statute was intended to prevent subinfeudation by intermediate lords. It had enacted that when a freeman sold his lands and tenements, the alienee should hold the same, not of the alienor, but of the alienor's superior lord, and by the same services and customs by which the lands had been holden by the alienor himself. The power of subinfeudation was perfected in the proprietary by the subsequent section of the charter, which conferred on him the power of erecting tracts or parcels of his lands into manors, corresponding substantially to the same kind of estates existing in England, with the usual privilege to the lords of such estates of holding a domestic court, called the court-baron, for redressing misdemeanors and nuisances within the manor, taking the oath of fealty to the lord from the tenants, entering on the court roll the transfers of property and deaths of freeholders, exacting the fines due on transfers of the freeholds and reliefs or heriots due on succession of the heirs, and for settling disputes of property among the tenants. To this was added the power of holding courts-leet, or view of frank-pledge, that is, a taking of security for the good behavior of the tenants and residents on the manor, a species of police court.

Blackstone says (2 vol. 92) that, by reason of the statute *Quia Emptores*, "all manors existing in England must have existed as early as Edward I," so that Lord Baltimore was empowered to start the system anew in the wilderness, and borrow such immemorial customs of manors in the mother country as suited him. The grants of the proprietary were always held of one of his manors, named in the patents, which maintained the feudal tenure.

From the clauses of the charter referred to, it appears that the proprietary was the sole tenant of the Crown and the exclusive landlord of the province; that the proprietary was empowered to make grants of any estate or interest in his lands, to be holden directly of him by the same species of tenure under which he held the province of the Crown. McMahon's Hist. Md. 167, 168.

The charter, in conferring on the proprietary absolute powers and rights within his palatinate, was careful to save to the King the faith and allegiance and sovereign dominion due to him. There were also provisions in the charter for the protection of the emigrants to Maryland, as subjects and liegemen of the King, and for securing their allegiance to him as lord paramount.

In fact, the province was a grand fief or honor held of the Crown by the tenure of free and common socage, then the most favored species of tenure known to the laws of England; and by fealty only for all services, and not *in capite* nor by knight's service. The proprietary, in acknowledgment, was required, by what was then

known as the tenure of petit sergeanty, to present to the King at his castle of Windsor, every year, on Tuesday in Easter week, two Indian arrows of the province; and there was a reservation to the Crown of one-fifth of all gold and silver ore that might be found in the country.

The feudal relation established by the charter was this: the King was lord paramount, the proprietary *mesne* lord, and his grantees tenants *par avail*.

#### GRANTS, MANORS, QUIT RENTS AND LEASES.

The right to the soil of the province having been vested by the charter exclusively in the proprietary as his private estate, it was so respected, even when, as happened on two occasions, his government over the province was suspended. The course for Lord Baltimore to pursue, under these propitious circumstances in which he had the most direct personal interest, was plainly to encourage immigration into his province by all the means in his power, and get his lands settled by men who could build up the material prosperity of the country, and thus, incidentally but surely, give him a constantly increasing income.

For these purposes he had the province liberally advertised by the publication of pamphlets and "relations"; and by his conditions of plantation, proclamations and instructions to his deputy as governor of the province, he at an early period prescribed the conditions on which the lands should be granted, and the manner and terms of the grants. McMahon 167.

This granting of lands in time became a very heavy business, and the Land Office was early established as the principal department of the proprietary government. It has always been the general market in which all public lands have been offered for sale, and into which any one capable of holding real estate might come and purchase, according to the prescribed rules and terms of sale. All grants or patents for lands, whether from the proprietary or afterwards from the State, are founded on warrants issued from the Land Office.

The grants or patents passed under seal by Lord Baltimore, or his representative in the province, through the Land Office, were to the grantees, their heirs and assigns. In them, however, were reserved to the proprietary *quit rents*, to be perpetually paid to him, his heirs and successors, annually or semi-annually, by the tenant of the land, in acknowledgment of the tenancy.

Besides these quit rents, the proprietary was entitled to caution money and composition money, the consideration paid at the time of taking out the warrant, and at the return of the certificate on which the patent was issued from the Land Office; and also to the feudal fines then known to the law of England as alienation fines. Of these, caution and composition money alone survive to the State in the practice of the Land Office. McMahon 173; Revised Code, Art. 16.

The rents reserved on original grants of freehold and copyhold lands in England were denominated quit rents; but this term, strictly speaking, was applicable only to a fixed sum or rent reserved in lieu of, or as

a commutation to the lord for, all indefinite services due by the tenant to the lord of the fee, because then the tenant in respect of it was *quit* from all other services except fealty. 2 Bl. 43,\* 96.\* Wharton on Convey. 178 (74 Law Library). Cadwalader on Ground Rents in Pa. sec. 183.

According to Mr. McMahon (p. 169), the proprietary's quit rents were "rent charges, charged upon the land when it was first granted out by the proprietary." But apart from the fact that there was no clause in the grants providing the remedy by distress, which was necessary in deeds to constitute a rent charge (but would have been as much out of place in a grant from the proprietary in Maryland as from the King in England), there are certain feudal reasons why these quit rents should be classed with rent services.

Littleton (Co. Litt. 96 a., 147 a.) says: Where the tenant holdeth his land of his lord by fealty and certain rent, or by homage, fealty and certain rent, or by other services and certain rent, it is a rent service.

Fealty was impliedly due by the tenants who held of manors named in the grants, to the proprietary as landlord of the province, and in most of the grants it was expressly provided for, so that the personal service of fealty (which was not annexed to a rent charge) and the certain rent, which was in return for the enjoyment of the land and as evidence of the existence of the tenure, constituted these quit rents, rent services.

Distress was therefore incident to these quit rents as of common right, and without any express clause for

that purpose, as the tenant or grantee of the land held by fealty to which the power of distress was inseparably incident.

There was a feudal tenure between the proprietary and the grantee of his lands by force of the charter, for the tenant of the proprietary held of him by the same tenure as he did of the King. This was inconsistent with the nature of rent charges, which were not favored by the common law as being against the policy of the feudal structure, because they created no dependence of the grantee on the grantor, nor was the tenant of the land under the engagement of the oath of fealty to pay the rent as he was in the case of the rent service. Though the grants in Maryland were in fee simple, the fealty attached to the possible reverter of the lands to the proprietary, who had the feudal right of entry for escheat, forfeiture for treason and for non-payment of rent, and who frequently exercised this right as chief lord of the fee. *Cunningham vs. Browning*, 1 Bl. 305. Moreover, the lands of those who did not subscribe the engagement of fidelity, or comply with the conditions of plantation, were forfeited to the proprietary. *Proprietary vs. Darrell*, 1 H. and McH. 3 (Brantly's ed.). The oath of fidelity prescribed by the act of 1650, ch. 29, is given in 2 Bozman's Hist. 671; see also p. 659.

This matter is fully considered by Gilbert on Rents, and by Cadwalader on Ground Rents in Pennsylvania, where it has been held that the similar quit rents of William Penn (whose charter was drawn up in imitation of Lord Baltimore's) were rent services. In Pennsyl-

vania this question was of practical importance in the matter of the apportionment of rents, as the ground rents of that State are essentially the same as the old quit rents, and if they were rent charges, they could not be apportioned.

There is an example of the usual rent charge in the perpetual rents of Alexandria and other places in Virginia. As to these rents, see *Scott vs. Lloyd*, 4 Peters 205, and 9 Peters 418; *Willard vs. Tayloe*, 8 Wall. 559; *Wartenbury vs. Moran*, 3 Call. 424; *Marshall vs. Conrad*, 5 Call. 364. In *Scott vs. Lunt's adm.*, 6 Peters 584, a deed reserving a rent charge to General Washington in 1799 was considered. The rent charge is sometimes created in Maryland, but it should not be confounded with the proprietary's quit rent, which was strictly based on the feudal relation, and closely resembled the quit or chief rents made in ancient times by lords of manors in England. It must also be remembered that the statute of *Quia Emptores* not being applicable to the proprietary and his immediate tenants, a rent service could be reserved upon a grant in fee simple, as it could have been in England before the passage of that act. *Ingersoll vs. Sergeant*, 1 Whart. 337.

The *emphyteusis* of the civil law was more like the former Maryland quit rent than the present Maryland ground rent. It was a contract by which the owner of an uncultivated piece of land granted it to another, either in perpetuity or for a long time, on condition that he should improve it and pay for it an annual rent,

with a right in the grantee to alienate it or transmit it by descent to his heirs, and under a condition that the grantor should never re-enter so long as the rent was paid by the grantee or his assigns. In Louisiana such a rent is called a *rente fonciere*. It is a rent which issues out of the land, and it is of its essence that it be perpetual; it may, however, be extinguished. 2 Bouvier's Inst. 198.

In the instructions of Lord Baltimore in 1636 to his brother, the governor of the province, is contained the first outline of the plan for parcelling out the lands; which mode of colonization was, with some modifications, subsequently pursued by the proprietaries. 2 Bozman's Hist. Md. 37.

The grants by the proprietary were dependent on the conditions of plantation, and the number of acres in the holdings of the tenants were regulated by the number of persons in their families, and of servants or other persons brought over by them to inhabit and plant in the province. The quit rents at first were necessarily small; for instance: "2000 acres of land of English measure for the yearly rent of 400 lbs. of good wheat," "a rent of ten lbs. of wheat yearly for every fifty acres," "for the yearly rent of twelve pence for every fifty acres." 2 Bozman 37; Doyle on British Colonies in America (ed. 1882) 185.

To all who should come and fulfil the conditions of plantation the proprietary at first offered land at a quit rent of one shilling sterling for fifty acres, which was the smallest holding. In 1658, the value of land having



increased, the quit rent was raised to four shillings; and in 1738 the caution money was also raised from forty shillings a hundred acres to five pounds sterling, on which consideration vacant, unimproved lands continued to be granted until the Revolution. Revised Code, Art. 16, sec. 20.

The following is a manuscript receipt for quit rents preserved by the Maryland Historical Society: "March 8th 1659. Receaved then of Thomas Gerrard of St. Clement's Mannor the full summe of sixty pounds in full discharge of ten yeares rent ended at Christmas 1659, the said summe being paid in Tob. at two pence pr. pound. I say receaved by me, Philip Calvert, Trē'r. Witnesses: William ffuller, Ri. Ewen." The Society has two other receipts of the same date and to the same effect—"accounting from the first day of the pattent"—from Philip Calvert, who was then the Secretary of State and Treasurer of the province, to Thomas Gerrard for rent due on "Bassford Mannor" and on "Nestwood Mannor." When these receipts were written the year began on the 25th of March, old style.

The following are the *habendum* and *reddendum* of a grant made by Lord Baltimore in 1640: "To Have and to Hold [a tract of 750 acres] to the said William Britton, his heirs and assigns forever, to be holden of our manor of Little Britain; Yielding therefor at our usual receipt at St. Maries, fifteen shillings in money sterling, or one barreil and a half of good corn." Kilty's Landholder's Assistant 73. The *habendum* and *reddendum* in some grants ran as follows: "To Have and to Hold the same

[a tract of 10,000 acres] unto him, the said Charles Carroll, his heirs and assigns forever; to be holden of us and our heirs, as of our manor of Baltimore, in free and common socage, by fealty only for all manner of services: Yielding and paying therefor, unto us and our heirs at our receipt at the city of St. Mary's, at the two most usual feasts in the year, namely, at the feast of the Annunciation of the Blessed Virgin Mary and St. Michael the Archangel, from and after the second day of April which shall be in the year 1723, the rent of one hundred pounds sterling in silver and gold" (Cassell vs. Carroll, 11 Wheat. 135)—*i. e.* Lady day and Michaelmas (say April 1 and October 1), the usual days appointed in England for payments in contracts of this nature. See Gilbert on Rents 52 (20 Law Library).

The quantum of the rent to be reserved was regulated by the proprietary's proclamations or instructions; and it varied with the increasing value of the lands to be granted, as already stated. At first it was payable in wheat or tobacco, afterwards in money alone, or in the commodities of the country. The right of the proprietary to require payment in money, of quit rents and alienation fines, was at an early period commuted for payment in tobacco. After 1733 quit rents and alienation fines became again payable in money, and continued thus payable until the Revolution. McMahon 169, 174; 2 Scharf's Hist. Md. 122, *note*.

In the early days of the province the personal estate of the colonists was taxed by the Assembly for the defraying of public expenses, but the lands granted to

them were not directly taxed, as they were considered sufficiently burdened by the payment of the quit rents and alienation fines to the proprietary. 2 Bozman 146.

Tracts of land 1000 to 10,000 acres, and in some cases more, passed and granted subject to the rents reserved to the proprietary and his alienation fines, were erected into manors in some cases, with the privilege to the lords of the manors of holding courts-baron and courts-leet, or view of frank-pledge.

In patents where manors were granted, after the *reddendum*, the following was inserted: "And we will that the lands and premises hereby before granted be from henceforth erected into a manor, called by the name of——manor, with power of holding court-leet and court-baron and all other things, matters and perquisites to a manor belonging by the laws and customs of the kingdom of England, and as fully and amply to all intents and purposes as we have at any time heretofore granted manors to others, the inhabitants of this our province." The manors were nominally holden of "honors." Kilty 93.

Though the power was not often exercised, it seems that manorial courts were held in some cases in the early days of the province. It is probable, however, that the county courts, when established, swallowed up their jurisdictions. 2 Bozman 39, 581; Kilty 57, 70, 97.

The minute book, in manuscript, of the proceedings of the court-baron and court-leet of St. Clement's manor is preserved in the archives of the Maryland Historical Society. It is in all likelihood the only record of this sort now in existence. (See Appendix.)

The large landed proprietors, somewhat like the Dutch patroons of New York, were absolute on their plantations, owing, however, to the proprietary fealty, rents, fines, and military service against the enemies of the province. They in many instances entailed their estates, so that they could not be sold. The entails were subject, nevertheless, to being docked by fine and common recovery; but it was not until the passage of the Act of 1782, ch. 23 (Revised Code, Art. 44, Sec. 7) that an effectual mode by conveyances was adopted for breaking the entails.

The landed proprietors leased parts of their manors (always retaining a part for their desmesnes, as in England) for terms of years or for lives to under-tenants, called, as on manorial estates in England, by the names of freeholders, leaseholders, suitors and resiants, that is, residents on the manor subject to the jurisdiction of the court-leet. Davis' Day Star 117; 2 Scharf 17; Peter vs. Schley's lessee, 3 H. & J. 211; Record of St. Clement's Manor, in Appendix.

The grants of parts of manors to freeholders for the grantee's life and *pur autres vies* were much in use in the province. It would seem that the freeholders on these manorial estates had somewhat the same rights as socage tenants on manors in England, and that, as in such estates, the heir was allowed to succeed the ancestor in the tenure, on payment of the same rent, equivalent to renewal by custom, of a demise. 2 Bl. 97\*; Wharton on Convey. 167\* (74 Law Library).

The heriot or farlieu, commuted for a fine equal to one

year's rent, exacted by the lord of the manor on the death of a tenant or of a *cestui que vie*, commonly attached to copyhold estates, and stipulated for in England in leases for years determinable on lives, was also exacted in the province. Kilty, it is true (p. 105), cites a case in 1674, in which the proprietary expressly disclaimed it; but this was not a case for the application of the customary heriot, which was exacted only in cases of tenants for life, where the heirs were allowed to succeed. It appears that through a mistake of the clerk, patents for land having contained a condition that the grantee should pay to the proprietary every third year, one year's rent "for and in respect of a heriot," the proprietary ordered new patents to issue without the condition.

As showing that heriots on the death of a freeholder or tenant for life were exacted in Maryland by the lords of manors as well as fines on alienation, the steward's minute book of the proceedings of a court-leet and court-baron of St. Clement's manor, held the 28th October, 1672, contains the following entries: "We (the jury or "homage") present an alienacōn from James Edmonds to Thomas Oakely upon wch. there is a releife due to the lord, and Oakely has sworne fealty. We present, that upon the death of Mr. Robert Sly there is a releife due to the lord and that Mr. Gerard Sly is his next heire, who hath sworne fealty accordingly. We present an alienacōn from Richard ffoster, of pt. of his freehold to John Blackiston, upon which there is a releife due to the lord." The above names appear in the list of freeholders of the manor. There are other entries of similar import.

The record uses the feudal word "relief" (from the Latin *relevare*, because the estate was relieved from the lapsed state into which, by the theory of the feudal law, it had fallen). This term was applied to the heriot as well as the alienation fine, and was paid by a year's rent from the land; and in England a relief could be enforced by distress. Wharton 178.

If it appeared that the grants of these tenants had been entered on the record of the court-baron, the above extracts might be construed as an evidence of a holding by copy of court-roll, or according to the custom of the manor, usual in England. In fact, the ceremony of fealty and some of the fruits of tenure, viz. reliefs, fines for alienation and escheats, were in use in the province; and there is reason to presume that in connection with the system of manors, the incidents of copyhold estates, viz. fealty, suit of court, reliefs or heriots, quit rents and fines, were not unknown, for a time at least. By the oath of fealty the tenant swore that he would be true to his lord, and bear to him fealty and faith for the lands and tenements he held of him, and that he would truly do and perform the customs and services that he owed to him.

These sprigs of feudalism, however, could not take deep root in the new soil and they did not long survive their transplanting. The proprietary alone gathered the fruits of tenure until the Revolution. Kilty 28, 93; 2 Boz. 581.

In 1651 the proprietary proposed in a letter to Governor Stone, as a means of civilizing and Christianizing

the Indians, that six bands of them should be settled on a tract of some ten thousand acres near Wicomico river, to be erected into a manor, to be called Calverton manor, with power to the steward to keep court-baron and court-leet, and to grant by copies of court-roll copyhold estates for one, two or three lives of any part of the manor (except the demesne of one thousand acres set apart for the proprietary) to Indians, to be holden of the manor upon such services to be done to the proprietary by such copyholders as the steward with the approbation of the governor should think fit, reserving an annual rent of one shilling sterling or its value on every fifty acres, which no one copyhold should exceed, except the copyholds to the werowances of the bands, to whom two hundred acres apiece might be granted. 2 Bozman 676. It is not known whether this plan of making copyholders out of savages was even partially realized, but considering their inherited wildness and nomadic habits it is not likely that it could have succeeded. An Indian might become a villain, but never a villein!

Kilty states a case where the rents on certain lands and tenements holden of the manors of St. Michael, St. Gabriel and Trinity, had been unpaid for three years, and no distress for the levying of the rents and arrears being found on the deserted premises, the lands escheated to the lord of the manors, "according to the law and custom of England in such case." There were three tenements each of one hundred acres, for which the rent was "two barrels of corn and two capons" for each tenement. This payment of rent in produce cor-

responds with the custom on English manors for the socage tenants to render to the lord as rent, corn (that is, grain), cattle, &c. Hoffman's Legal Outlines 561. Kilty also states a case in 1648 in which it was decided by the Provincial Court that tenements appertaining to "rebels" within Governor Leonard Calvert's manors [who had taken part in Claiborne and Ingle's Rebellion] were forfeited to the lord of the manors by virtue of the proprietary's conditions of plantation and according to the custom of manors in England. Kilty 103, 104. Mr. Bozman entertained doubts of the legality of the court's decision in this case, for the reason that forfeitures for treason did not usually belong to lords of manors in England, but to the King, and that in Maryland they belonged to the proprietary. 2 Bozman 345, 581.

The following are the *habendum* and *reddendum* of a grant or demise for three lives made by a lord of a manor to a freeholder in 1742: "To Have and to Hold the demised premises (part of My Lady's Manor in Baltimore County) unto Jacob Frizell, his heirs, executors, administrators, and assigns from the day and date hereof, and during the terms of the natural lives of him, the said Jacob Frizell, being about the age of twenty-one years, and also the natural life of Abraham Frizell, being about the age of twenty years, and also the natural life of Ann Taylor, being about the age of sixteen years,—Yielding and paying therefor unto Thomas Brerewood, his heirs and assigns, every year the yearly rent of 800 lbs. of good merchantable leaf



tobacco, on or before the twenty-fifth day of January in every year during the terms of the above-said lives." The tobacco to be rolled to a landing on the manor. There was a covenant for quiet possession. In case of a sale or assignment of the premises by the lessee or his assigns, or the survivor or survivors and their assigns, by their mutual consent, as was allowed by the lease, they were required to give the first refusal thereof to the lessor, his heirs, executors, administrators, or assigns, and the non-compliance with or transgression of the conditions of the lease, it was agreed, should be deemed a forfeiture and the lessor could re-enter. This form of lease is similar to one for three lives used by the Bishop of Durham in his county palatine, and may have been suggested by it. The form is given in Wood's Conveyancing.

As appears from the observations of Charles Carroll of Carrollton, in his *Journal of a Journey to Canada in 1776* (edited by Brantz Mayer and published by the Maryland Historical Society), the system of leasing lands for three lives was customary among the patroons of manors on the Hudson, reserving a fourth, or more commonly a tenth, of the produce, with alienation fines.

The Maryland leases sometimes had a covenant on the part of the lessor, his heirs and assigns, for a renewal of the lease during the lives of the heirs of the lessee upon payment of the like rent. *Thomas vs. Hamilton*, 1 H. & McH. 191; *Russell vs. Baker*, 1 H. & J. 72.

# ENTAILS AND LEASES OF THE PROPRIETARY'S RESERVED LANDS AND MANORS.

Besides entailing the whole province on several occasions, the proprietary entailed in his family large tracts of land and many manors. Parts of his reserved lands and manors he at times leased out for terms of years and also for lives. The reserved portions of his manors not leased were known—as in England—as the demesne lands. The proprietary's leases were generally for terms of five to thirty-one years, or for three lives in possession, and in the last century often for long terms of years. Kilty 91, 219, 221; Thomas vs. Hamilton, 1 H. & McH. 191; Russell vs. Baker, 1 H. & J. 71; Cassell vs. Carroll, 11 Wheat. 135. There is an instance of a lease made by agents of the proprietary in 1774 for eighty years in Gwynn vs. Jones, 2 G. & J. 173. In McComas vs. Bradford, 3 H. & J. 444, copies of original leases from the agents of the proprietary—one dated in 1742 and the other in 1744, each for ninety-nine years, reserving rents to the proprietary, his heirs and successors, of parts of his manors in what is now Harford County—were offered in evidence in an action of ejectment. See *quare* in Harper vs. Hampton, 1 H. & J. 712, whether the leases entered into by the proprietary's agents were sufficient to transfer his interest in the lands leased. Luther Martin regarded them as valid, 1 H. & J. 699. See also Gilbert vs. Lee, 4 H. & McH. 488.

This is the kind of leases that are known in the Land Office as "Proprietary Leases." They were all

for ninety-nine years, and from the large number of them recorded they were evidently much in use for leasing parts of the proprietary's reserved lands and manors. They were executed by the receiver-general and other agents of the proprietary appointed for that purpose. They are in the ordinary form of leases for terms of years at common law. They contain no covenant for renewal.

Their peculiar features are as follows: All mines of gold, silver, copper, lead, tin and iron which should be found or discovered within the province are excepted and foreprized. The lessee was not allowed to demise, set over, or assign the premises, or any part thereof, for a longer time than from year to year only, without the license or consent in writing of his lordship or of his agents, or of whomever might be appointed to receive the rent. For every license to assign the lessee was obliged to pay the amount of one year's rent. These leases contain no clause providing for the remedy of distress. The provisos are: That if the rent should be unpaid by the space of thirty days after the expiration of one year; or if the lessee committed waste, or made sale of timber contrary to the agreement on that matter contained in the lease; or if he should assign the premises without license first had and obtained as aforesaid, that then and from thenceforth the lease should cease, determine and be void; and the proprietary, his heirs and successors should and could re-enter and have and enjoy the demised premises as of his former estate.

These leases were executed in the presence of two witnesses by the agents authorized to make them; but there was no acknowledgment required before a judge or justice, as was then the law in the case of ordinary leases for above seven years—1715, ch. 47, sec. 8.

It was held (in 1748) in *Gilbert vs. Lee*, 4 H. & McH. (Brantly's ed.) 315, that where a lease was executed to the plaintiff by the proprietary's agent and signed by the agent, of land in possession of the defendant, but was not sealed or delivered on the premises, that the plaintiff was entitled to recover against the defendant. See acts for quieting possessions in Kilty, appendix XXXV, &c.

#### ESCHEATS.

The proprietary, as lord of the soil, who took the land in lieu of the services because there was no one to render them on the tenant's death without heirs, was entitled to escheats of lands where the owners died without heirs. The title being revested in him, the lands were in such cases again granted by him through the Land Office. Escheats continued after the Revolution, though their nature was essentially changed, as the lands, when the owners die without heirs, now revert to the State as property without owners, upon a principle of justice that the whole community should hold the derelict property for the benefit of all. *Matthews vs. Ward's lessee*, 10 G. & J. 451; *Casey's lessee vs. Inloes*, 1 Gill 506; Revised Code, Art. 16; Kilty 28; Bozman 581.

## FINES ON ALIENATION.

Fines for alienation, an incident of the tenure by socage, as well as that in chivalry, were payable to the proprietary till the American Revolution, although they were abolished in England in 1660. They sprang from the feudal relation of lord and tenant; and as no feudal tenant could alienate, unless with the license of his lord, this license would hardly be given without some present compensation. Consequently, it was stipulated in every grant passed by the proprietary, of manors or other lands, that one year's rent for a fine should be paid by the tenant on every alienation of the manor or land granted, or of any part thereof, or else the alienation to be void; and the alienations were required to be entered on record within one month thereafter in the Provincial Court, or in the Court of the County where the land lay. Like fines were payable to the proprietary by his lessees for the license of assigning their leases. The proprietary was also entitled to fines on devises, but these were abolished at an early period. Kilty 28, 56; McMahon 175; 2 Bozman 581.

## DEBT-BOOKS AND RENT-ROLLS.

The debt-books (from 1733 to 1774) of the proprietary for several counties have been preserved in the Land Office. These books were placed in the hands of the collectors of the rents appointed for each county, and they specified the rent due by each individual and the land on which it accrued,—and evidencing, as they

do, the possession of the lands specified by the individuals charged, and generally noting the transfers, they have been often relied on to furnish a presumption of title. *McMahon* 171; *Russell vs. Baker*, 1 H. & J. 76; *Contee vs. Godfrey*, 1 Cr. C. C. 479.

The rent-rolls of the proprietary, containing a list of all rents, fines, alienations, and dues and rights in which the proprietary was interested, were of the same nature as the debt-books. *Casey's lessee vs. Inloes*, 1 Gill 430, 492; 1 H. & McH. 552. A keeper of the rent-roll was appointed for each Shore (there being formerly two Land Offices—one for the Eastern and one for the Western Shore), and new rent-rolls were prepared annually. The clerk of the Provincial Court and the clerks of the County Courts were obliged to transmit annually to the Land Office a list of all alienations in the counties, officially or otherwise made known to them, and their reports were entered in the rent-rolls. Extracts applicable to the several counties were made out for the collectors of rents in the counties.

Before the year 1766 only deeds of bargain and sale were required to be recorded, and land was often conveyed by feoffment, and otherwise than by bargain and sale. The records, therefore, did not disclose all the alienations; but the clerks were bound to ascertain them, and the alienors, to relieve themselves from the exaction of rent, and the alienees, to perfect their title under the provisos in the patents, were interested in reporting them to the clerks.

As the rent-rolls mentioned the original grants, the grantees, the acres granted, the rents payable, and the various persons through whom the lands had been transmitted, so, like the debt-books, they have been found useful in some cases to prove the chain of title to lands. Gill's *Dorsey on Ejectment* 92 ; 1 H. & J. 18, 122, 125.

It appears that at one time the proprietary allowed his collectors of rents ten per cent. if collected within the year. He also sometimes farmed his rents at the rate of twenty to twenty-five per cent. discount. Kilty 235.

#### A GRANT FROM THE LORD PROPRIETARY.

After the explanations of the tenure of land under the proprietary, the reader may be sufficiently interested in the matter to look at the form of an ordinary grant. The following is a patent to David Jones, the first settler on the banks of the rivulet to which he gave his name, which flows through the city of Baltimore :

“ Charles Absolute Lord and Proprietary of the Provinces of Maryland and Avalon Lord Baron of Baltemore in the Kingdom of Ireland To all persons to whom these presents shall come Greeting in our Lord God Everlasting Know yee that for and in consideration that David Jones of Baltemore County in our said Province of Maryland hath due unto him one hundred and thirty acres of land within our said Province part of a warrant for two hundred and fifty acres granted him the eight and twentyeth day of Aprill one thousand

six hundred Eighty two as appeares upon Record and upon such Conditions and tearnes as are Expressed in the Conditions of Plantation of our late ffather Cæcilius &c. of noble memory according to his Declaration bearing date the two and twentyeth day of September one thousand six hundred fffty eight with such alteracōns as in them are made by his Instructions to us bearing date the eight and twentyeth day of July one thousand six hundred sixty nine and the one and twentyeth day of March next following all being and remaining upon Record in our said Province of Maryland Wee Doe hereby grant unto him the said David Jones—(then follows a description of the land)—according to the certificate thereof taken and returned to the Land Office att the Citty of St. Maryes bearing date the twelveth day of June one thousand six hundred Eighty two and remaining upon Record Togeather with all Rights profitts benefitts and Priveledges thereunto belonging (Royall mines Excepted) To Have and to Hold the same to him the said David Jones his heires and assignes for Ever To be holden of us and our heires as of our mannor of Baltemore in free and Common Socage by fealty only for all manner of Services Yielding and paying therefor unto us and our heires att our Receipt att the Citty of St. Maryes att the two most usual feasts in the yeare (viz) the feasts of the Annuntiacion of the Blessed Virgin Mary and St. Michael the Archangel by Even and Equal porcōns the Rent of five shillings and two pence halfe pounds sterling in silver and gold and for a fine upon every



Alienacōn of the said land or any part or parcell thereof one whole yeares rent in silver or gold or the full value thereof in such Commodities as wee and our heires or such officer or officers appointed by us and our heires from time to time to Collect and Receive the same shall accept in discharge thereof at the choice of us and our heires or such officer or officers as aforesaid Provided that if the said David Jones his heires or assignes shall not pay unto us or our heires or such officer or officers as aforesaid the said sum for a fine before such Alienacōn and enter the said Alienacōn upon Record either in the Provincial Court or in the County Court where the said parcell of land lyeth within one Month next after such Alienacōn the said Alienacōn shall be void and of none effect

“ Given at our Citty of St Maryes under the Greate Seale of our said Province of Maryland the tenth day of August in the ninth yeare of our Dominion over our said Province of Maryland annoq. Domini one thousand six hundred Eighty four

“ Witnesse our trusty and well beloved Coll. Henry Darnall and Coll. William Digges Commissaries Genll. of our said Province of Maryland.

“ (Signed)

(Great Seal.)

“ Henry Darnall

“ Wm. Digges ”

#### **ABOLISHMENT OF QUIT RENTS AND CONFISCATION OF THE PROPRIETARY'S PROPERTY.**

On the death of Frederick, the sixth and last Lord Baltimore, in 1771, Henry Harford, his illegitimate son,

became entitled to the province and all its appurtenances, as devisee under his will. He was then a minor, and by his guardians he entered into possession of the province and received its rents and revenues until the outbreak of the Revolution, when the people in convention took the government into their own hands and ousted his officers and agents. The proprietary's quit rents, caution and composition money, alienation fines, and other revenues from the province, consisting of port or tonnage duty, tobacco duty, and fines, forfeitures and amercements imposed in the courts, which enured to him as the head of the government and the fountain of justice in the province, besides his manors and reserved lands, were all lost to him. Kilty 268.

The annual value of the proprietary's quit rents at the time of the Revolution has been estimated at £30,000. (2 Scharf's Hist. Md. 374.) McMahon (p. 172) however, from an examination of his existing debt-books, puts the income from these rents in 1770 at a much smaller figure. It is difficult, if not impossible, to ascertain the proprietary's actual income from this source, as the rental was his private estate and collected exclusively under his own direction, and the returns of his collecting officers made no part of the public records.

The Bill of Rights adopted in 1776 asserted that the inhabitants of Maryland are entitled to all property derived to them from or under the charter granted by Charles I to Cæcilius Calvert, Baron of Baltimore.—Art. 4 of Decl. of Rights of 1867.

In 1780 the General Assembly of Maryland, in an act drawn by Samuel Chase, declared that the citizens of this State "from the Declaration of Independence and forever thereafter be and they are hereby exonerated and discharged from the payment of quit rents to the Lord Proprietary or any other subject of a foreign prince, and that the same shall be forever abolished." Alienation fines were constructively embraced by this act. In the same year an act was passed for the confiscation and seizure of British property and of the property of tories and refugees, and all the late proprietary's lands and manors were confiscated to the State.

Henry Harford estimated his losses, in his claim presented to the British Government for compensation, at £447,000. He was allowed £90,000.—2 Scharf's Hist. Md. 394 ; Cassell vs. Carroll, 11 Wheat. 139.

To a memorial of Henry Harford in 1783 to the legislature for compensation for loss of his quit rents and other property, that body replied, that "they were clearly of opinion that the quit rents reserved upon the grants of the former proprietaries were hereditaments subject to all the rules and consequences of other real estate, and therefore could not consistently with law be held by an alien ; and that no part of the Treaty of Peace could give the smallest color to the supposition that these hereditaments, more than others, were saved and reserved ; that no power on earth could place the free people of Maryland in the degraded condition of tenants to a superior lord, a foreigner, and a British subject." This legislature confirmed that of 1780 by

further declaring that the payment of quit rents, even to the State of Maryland, "should never be exacted ; and that the citizens of this State should hold their lands on equal terms with the citizens of the other States."

That erudite lawyer, the late David Hoffman, who half a century ago lectured in the University of Maryland to some of the present Nestors of the Bar, says, in his Legal Outlines (594): " The State, after the Revolution was consummated, succeeded to all the rights of the lord proprietary ; but there was nothing in that revolution which *per se* abolished tenure, and relieved our citizens from the obligations of fealty, and whatever feudal services had been reserved ; nor could the abolition of the quit rents due to the heirs of the lord proprietary necessarily have that effect. I am not aware of any legislative act of this State which has abolished tenure and converted our holdings into pure *allodium*. The legal obligation of fealty, therefore, may possibly remain, though it is certainly dormant, and it is not probable that it will be revived."

In Pennsylvania, after the Revolution, the commonwealth succeeded to the rights of the proprietary for a valuable consideration paid to his heirs. From this fact it is said that tenure was not abolished in Pennsylvania, but so reduced, that it is considered to mean only fealty. Cadwalader on Ground Rents, secs. 85, 86, 93, 488. See *Ingersoll vs. Sergeant*, 1 Wheat. 337 ; 3 Kent's Com. 489\*.

In this State, however, the Court of Appeals has decided, in *Matthews vs. Ward's Lessee*, 10 G. & J. 451,

that after the Revolution lands became allodial, subject to no tenure, nor to any of the services incident thereto.

By the abolishment of quit rents and alienation fines the landed proprietors were great gainers, as thenceforth they held their plantations in fee-tail or fee-simple, free from these feudal exactions; and in cases where they held under the original patents, the amounts paid by themselves or their ancestors as purchase money—that is, caution and composition money and fees in the Land Office, were very insignificant compared with the increased value of the lands.

Vestiges of manorial rents and customs may be discovered throughout the State at this day—(Dorsey vs. Eagle, 7 G. & J. 321.) Some of the farms leased of manors pay a rent of a certain number of bushels of merchantable wheat, delivered on specified days at mills on the manors. This payment of rent in kind is recognized in the Revised Code, Art. 67, VII, secs. 10–14, which provides that where a share of the growing crop is reserved as rent, such rent shall be a lien on the crop.

Though quit rents were abolished so far as the late proprietary and the State of Maryland were concerned, yet the landowners retained the system of rents under the form which had already been in use for some years—of the long leases—which will now be considered.



# GROUND RENTS IN MARYLAND.





**ORIGIN OF LEASES FOR NINETY-NINE YEARS  
RENEWABLE FOREVER.**

Some years before the Revolution the system of annual rents, known in this State as ground rents—reserved on leases for ninety-nine years renewable forever, was adopted in Baltimore, and to a less extent in the adjacent country, and in other towns of Maryland.

Leases for ninety-nine years were customary in England, without covenants for renewal; and were in use by the proprietary in leasing parts of his manors and reserved lands, with the provisos and the prohibition on the right of assigning the lease, unless license to assign was obtained by the lessee from the proprietary and a year's rent paid to him for the privilege, as has already been explained. There were, however, no covenants for renewal in these proprietary leases. Leases in England have sometimes, though rarely, contained covenants for renewal; and they have not been enforced unless plainly expressed, as is shown by the cases cited in 4 Greenleaf's Cruise 393\*, &c.; Woodfall, Land. and Ten. (11th ed.) 332; Finch vs. Underwood, L. R. 2 Ch. Div. 310–315. See Banks vs. Haskie, 45 Md. 219; 4 Kent's Com. 94\*, 107\*, 109\*, &c. These English leases were generally determinable on lives.

See the form of an English "West country lease for ninety-nine years determinable on lives," in Wood's Conveyancing.

It would seem that the peculiar form of the covenant for perpetual renewal in the Maryland leases is not found in those of any other State or country. *Banks vs. Haskie*, 45 Md. 218.

The strong point of resemblance between our renewable leases for ninety-nine years and the agricultural leases for ninety-nine years determinable on lives, in use in Ireland, and mentioned in *Banks vs. Haskie*, 45 Md. 220, and *Myers, adm'r of Presstmann vs. Silljacks*, 58 Md. 332, is in the fact that both kinds of leases have a covenant for renewal; otherwise they are dissimilar in form and terms.

These Irish leases were for ninety-nine years determinable on three lives—that is, "if the three *cestuis que vie* named in the lease, or any or either of them should so long live; and in the lease was contained a covenant for renewal forever on the fall of every life, on the tenant's paying the amount of one year's rent for each renewal within twelve months after the fall of each life." *Boyle vs. Lysaght, Vernon & Scriven* (Irish House of Lords) 135.

The period of twelve months allowed for renewal in the Irish leases corresponds with the year and a day allowed by the feudal law to the heir of the holder of a benefice, within which to tender his oath of fealty and to pay his relief; and if he failed to come up within the time he forfeited his right of succession, and the lord was at liberty to dispose of it to a stranger.

The tenant was thus required by the Irish leases to pay the fine for renewal within twelve months or a reasonable time thereafter allowed by a local equity, whenever a *cestui que vie* died, and obtain a new lease for ninety-nine years determinable on lives, as in the original lease. The new lives were nominated in continuous new leases in the stead of the old lives that had fallen. In this way the lease was perpetually renewed—very often at short intervals of time, as the number of renewals depended on the mortality of the *cestuis que vie*, and the more speedily they died, the better for the landlord. There was thus a speculation in these peculiar leases, which, no doubt, added zest to the bargain on both sides.

But these leases for years were, from a practical point of view, unnecessarily complicated with the collateral determinations of the estate, so that unless there were a renewal on the efflux of each life, the lease was at an end. At law these leases were regarded as chattels real, but in substance and equity they were leases for lives or freeholds, for they did not depend on the number of years, but dropped with the lives. Vernon & Scriven 147. By reason of their complexity and hybrid nature they were not adapted to the requirements of a commercial community, where the untrammelled alienation of property, held by titles clear of dependence on the uncertain duration of life, was most desirable.

These Irish leases were possibly not unknown to the Maryland lawyers of the last century, some of whom were natives of Ireland, and others—as Daniel

Dulany the greater, Charles Carroll, barrister, and Charles Carroll of Carrollton—had been students of law, and ate the requisite number of benchers' dinners, at the Inns of Court, London. They were necessarily familiar with the English and Maryland long leases and the leases for three lives in use in the province. Consequently, out of these old-world customs, by a process of legal selection, was evolved the lease for the certain term (carved out of a round century) of ninety-nine years (equivalent to the average length of three lives in succession), renewable forever, shorn of its collateral determinations, and retaining only the renewal fine—one year's rent—the same in amount as the alienation fine due the proprietary by virtue of his grants, the fine reserved to him for license to assign in his long leases, the fine paid to the Irish landlord on the fall of each life, and the heriot exacted by the lord of a manor on the death of a freeholder.

The object was to create permanent rents for the benefit of the landowners, with the advantage of being rent services, which idea was probably suggested by the proprietary's quit rents, to which the inhabitants of the province had been long accustomed; and at the same time to secure to the tenant such use and enjoyment of the land, that he would be justified, from the assurance of his long lease, in making valuable improvements on the premises.

The common law lease, in which the reversion remained in the landowner and his tenure of the proprietary was not interfered with, was evidently con-

sidered by the lawyers of the period as the form best adapted to accomplish their purpose. In fact, it is a question whether the landed proprietors could have secured their object in any other way. They might have created rent charges, but they were not desirable. It may be inferred from sec. XVIII of the Charter that subinfeudation was permitted only for the purpose of allowing his tenants to hold immediately of the proprietary, as the proprietary held of the King, and that it did not extend beyond his immediate grantees. Kilty 28. At least it does not appear, that the lords of manors ever exercised the power (if it existed by construction of the charter) of making grants and feoffments, to be holden of them by such rents as they held of the proprietary. The reservations of rents to them were, in point of fact, under leases for lives—(in some cases renewed to the heirs of the life-tenants, as in copyhold estates)—or for terms of years. The conveyances in fee-simple or fee-tail of manors or other lands were made, subject only to the payment of quit rents and alienation fines to the proprietary, and to the conditions of plantation and of the patents.

Section XIX of the Charter authorized the proprietary to erect tracts of land into manors, and provided for courts-baron and courts-leet, to be held by lords of manors or their stewards. The charter to William Penn, however, went further, and expressly empowered the lords of manors to grant lands in fee-simple or fee-tail, reserving quit rents to themselves (now known as ground rents in that State). It would therefore seem

that the *non-obstante* clause as to the statute *Quia Emptores*—(the same as that contained in section XVIII of the charter to Lord Baltimore)—was supposed not to extend beyond the proprietary's immediate tenants; and when the charter to Penn was granted, the additional section was inserted to extend the power of subinfeudation further than was authorized by the charter to Lord Baltimore.

The form of a lease for ninety-nine years was consequently adopted in Maryland, as being in accordance with the tenure of land authorized by the Charter, for the purpose of reserving rent services, known as ground rents, to the tenants of the proprietary; while in Pennsylvania, by force of the charter to Penn, the form of the proprietary's grant was used for the same purpose.

Leases for a long term of years grew into favor after the statute of *Quia Emptores* was passed, and one of the objects was to avoid the statute. The statute allowed alienations on all subtenancies for life or for years not amounting to subinfeudation. A rent could then be reserved to a man and his heirs on a lease for a term of years, no matter how long; it was but a contract for temporary enjoyment of land and not an alienation in fee; therefore, a lease for ninety-nine years was of no higher dignity than for one year. Cadwalader on Ground Rents in Pa., secs. 106, 107; Ehrman vs. Mayer, 57 Md. 622.

As subinfeudation stopped, according to this construction of Lord Baltimore's charter, with his imme-

diate grantees; it follows that the renewable lease for ninety-nine years was *ex necessitate rei*, the only valid form under which a ground rent could be created in Maryland.

Mr. J. R. D. Bedford, the manager of the Baltimore Title Company, has courteously furnished the following information :

“ The earliest renewable leases for ninety-nine years were made about the year 1750 by Thomas Harrison, ‘for and during the full term of ninety-nine years, to be complete and ended from the — day of —— next: yielding and paying therefor yearly and every year during the said term the full and clear rent or sum of ——.’ Such leases usually contained a covenant, as follows: ‘And further, that he, the said Thomas Harrison, his heirs and assigns and all and every person and persons lawfully claiming, or which may hereafter lawfully claim any estate, right, title, or interest either in law or equity, of, in or to or out of the said lot of land and premises hereby demised and leased, with its appurtenances, or any part or parcel thereof, from, by, or under him, the said Thomas Harrison, his heirs or assigns, or in trust for him or them, shall and will, at the reasonable request and at the cost and charges in the law of him, the said lessee, his executors, administrators, or assigns, at any time or times hereafter, and upon his or their payment or tender of payment to the said Thomas Harrison, his heirs or assigns aforesaid, the sum of £— s— d—, sterling money (a year’s rent) for and in the name of a fine, make, execute, acknow-

ledge, and perfect a new lease or leases, agreeable to these presents, unto the said lessee, his executors, administrators, or assigns, of the said mentioned demised lot of land and premises, with the appurtenances; which said new lease or leases to be made as aforesaid shall be made for the full term of ninety-nine years then next to come, and shall be made at and under the same rent and with the like covenants, clauses, and agreements (*mutatis mutandis*) as are in these presents contained, and so from time to time renewable in manner aforesaid.'

"I have looked at quite a number of leases about that time and find they were all made in about the same form."

The ground taken up by Thomas Harrison and afterwards leased by him, lay to the east of Jones' Falls (now Calvert street), and to the east of the 60 acres of land of which Baltimore-town was originally formed, in 1730. Harrison's land (mostly marshy) lay between Jones'-town (added to Baltimore-town in 1745) and Baltimore-town, and was added to the latter in 1747. William Fell took up the land known as Fell's Prospect, afterwards called Fell's Point. It lay to the south and southeast of Jones' Falls, and was added to Baltimore-town in 1773.

The present precise form of the covenant for renewal—a decided improvement on that contained in the Harrison leases—is first found in the leases from William Fell and his son Edward Fell, made within the succeeding twenty years from 1750.



These leases are not open to any of the objections against perpetuities. Property is not thereby placed *extra commercium*. Banks vs. Haskie, 45 Md. 218.

## II.

### FORM OF THE LEASE.

The form of the lease for ninety-nine years, renewable forever, has changed but little from that of the Fell leases. The following are its essential provisions:

The owner of ground in fee-simple, in consideration of the payment of the rent and performance of the covenants, conditions and agreements thereafter in the deed of lease, made on the part of the lessee, his executors, administrators and assigns, to be paid and performed, "demises, grants, leases and to farm lets" to the lessee, his executors, administrators and assigns, a lot of ground, To Have and To Hold the same, &c., to the lessee, his executors, administrators and assigns, from the day next before the day of the date of the lease, "for and during and until the full end and term of ninety-nine years thence next ensuing, fully to be completed and ended: Yielding and Paying therefor to the lessor, his heirs and assigns the yearly rent or sum of —— dollars on" (—— specified days, either annually, semi-annually or quarter-yearly from the date of the lease) "in each and every year during the continuance of the demise, and that free and clear of all deductions for taxes, assessments and public dues of every kind and

nature whatever, that are now or which may be at any time or times hereafter levied, charged or assessed on the demised premises or on the yearly rent issuing therefrom."

Then follow conditions, that if the rent shall be in arrear in whole or in part at any time, the lessor, his heirs or assigns may make distress therefor; that if the rent is in arrear for sixty days, the lessor, his heirs or assigns may re-enter and hold the premises as in their former estate, until all arrearages of rent and all expenses are paid; that if the rent is in arrear for one year, the lessor, his heirs or assigns, may re-enter and hold the premises as in their former estate, and in such case the lease shall thenceforth be void and of none effect.

The covenants on the part of the lessee, are, that he, his executors, and administrators and assigns, will pay the yearly rent reserved in the manner and at the periods limited for its payment; and will pay the taxes, assessments and public dues levied, charged or assessed on the demised premises or on the rent.

The covenants on the part of the lessor, his heirs and assigns, are for the quiet enjoyment (as against the lessor and those claiming under him) of the premises during the term, of the lessee, his executors, administrators or assigns, or for special warranty; and—what is the peculiar feature of these leases—a covenant, that the lessor, his heirs and assigns, "at any time or times hereafter during the continuance of the present demise, on the request and at the cost and charge of the lessee, his executors, administrators or assigns, and on his or their

paying, or tendering in payment the sum of —— dollars” —(in the early leases, the amount of one year’s rent, in later leases, a sum of ten dollars, more or less)— “in the name of and as a fine for renewment, to the lessor, his heirs or assigns, shall and will make and execute, or cause to be made and executed unto the lessee, his executors, administrators or assigns a new lease of the demised premises for other ninety-nine years, to commence and take effect from and at the end of the term for which the same are demised, subject to the same rent, and under the like covenants, clauses and agreements as are therein before mentioned, so that this present demise may be renewable and renewed forever.”

Although by the Act of 1856, ch. 154, sub. ch. 1, sec. 9, it was enacted that “no covenant shall be implied in any conveyance of real estate,” yet, as this provision was not included in the Code of 1860, the law of implied covenants is still in force. It is consequently important to use the words “demise and grant” in a lease, as they imply that the lessor has a right to make the lease, and a covenant with the lessee for his quiet enjoyment of the demised premises; and by virtue of it, the lessee may bring an action on the implied covenant against the lessor. But this implied covenant is limited by any express covenant on the point which may be inserted in the lease. And, therefore, if there be an express covenant against all claimants “under the lessor,” all other claims and interferences with the lessee’s enjoyment of the demised premises, are excluded. *Expressum facit cessare tacitum.*

There is also an implied covenant in the words "yielding and paying," on which the landlord can bring an action of debt, or upon the implied covenant for the rent, against the lessee, (but he cannot recover in such case against the lessee after he has accepted his assignee as tenant), where the lease contains no express covenant for payment of rent; but all cautiously drawn leases contain such a stipulation. 1 Poe's Pleading 311.

The lease should be executed and acknowledged by the lessor, the lessee signing for the purpose of assenting to the terms of the lease, and to bind himself under the covenants and agreements therein contained so far as they affect him and those claiming under him. There is no occasion for an acknowledgment by the lessee, although a practice of taking it has grown up. Latrobe's Justice, 7th ed. sec. 2143. The practice of the lessor's wife uniting in the lease is customary, and it would seem to be necessary, as otherwise she might be defeated of her dower, by the husband granting a term reserving a merely nominal rent.

Renewable leases of the wife's lands for ninety-nine years are made by the husband joining in the lease with the wife, as is authorized by Revised Code, Art. 51, sec. 30. See Alexander's Brit. Stat. 326, 32 Hen. 8, ch. 28, sec. 3, and *Coale vs. Barney*, 1 G. & J. 324, as to leases of wife's property, and leases of trust property by a trustee and *cestui's que trust* for life, remainder in fee tail.

*Agreement to Lease.*

An agreement between A and B, in which the former agrees to give the latter a lease for ninety-nine years of certain land for a stipulated rent, as soon as he shall comply with certain conditions manifestly prepared and intended to be executed by both, but signed by A alone, with the day of the month left blank, and never signed or attempted to be signed by B, and never delivered to him during A's life, is an inchoate instrument passing to B no interest, either legal or equitable. *Howard vs. Carpenter*, 11 Md. 259.

An order directing possession of land to be delivered to a party "to whom it has been leased for ninety-nine years" is not itself a lease nor an agreement for a lease, for that term which equity can enforce being defective, if for no other reason, in not showing what rent is to be paid. Possession of land taken in May, in pursuance of such an order, cannot be regarded as showing that the party's subsequent holding was under a contract made in the following July. 11 Md. 259.

*Irredeemable and Redeemable Ground Rents.*

The form of lease before set forth was from the first the usual form for the creation of the Ground Rent Irredeemable without the consent, evidenced by deed made matter of record, of the lessor, his heirs or assigns.

In some cases, a lease is made for ninety-nine years renewable forever, as before set forth, with a covenant

added, to the effect that the lessor, his heirs and assigns, at the request of and on the payment by the lessee, his executors, administrators or assigns, "at any time during the continuance of the demise"; before or after a specified date; or at the end of (say) ten years from the date of the lease and before the expiration of (say) six months thereafter; or between two specified dates; or "at the pleasure" of the lessee, his executors, administrators or assigns,—of the amount of the yearly rent capitalized at the legal rate of six per cent. (for instance, if the rent were \$210 *per annum*, the sum of \$3500), and on the payment of all arrearages of rent and of a *pro rata* proportion of the rent due up to the day of the payment of the principal, will execute a deed in fee simple to the lessee, his heirs or assigns, free, clear and discharged from the rent. These are known as Redeemable Ground Rents. If, however, the lessee, his executors, administrators or assigns should not avail themselves of the privilege of extinguishing the rent within the periods specified, where those periods are limited, the ground rent becomes at law irredeemable.

### *Perpetual Leases.*

The original object of the lease for ninety-nine years renewable forever was to create a perpetual tenancy. *Taylor vs. Taylor*, 47 Md. 298.

This is evident from the covenant for perpetual renewal, and from the fact, that the early leases reserved a rent at the full annual value of the ground at the time

the lease was made; and there was, moreover, in the early leases a covenant on the part of the lessee, his executors, administrators and assigns, to improve the premises by erecting on them within a specified time buildings of at least the yearly value of the rent reserved as a security for the payment of the rent. In fact, tenants have been enjoined from removing frame improvements from demised premises on to adjoining fee simple property, as it would have left the premises vacant, and thus impaired the security.

The reversion of the fee to the lessor, his heirs or assigns, was most likely not contemplated, as on paying or tendering in payment the renewal fine and all arrears of rent, within the term, the covenant of renewal was tantamount to an actual renewal, enforceable by a Court of Equity if the new lease were not promptly executed.

The owners of lots in Baltimore virtually intended to lend their land out perpetually at interest, pay no taxes, and receive a fixed annual income, which could be granted in fee or would descend to their heirs.

As a century is a long time to look ahead, so the increase in the value of land and the complications which have since arisen in the matter of these ground rents were not within the ken of the original proprietors.

## III.

## SUB-LEASES.

Where the increase in the value of the leasehold interest over that of the reversion, leaves a margin in favor of the lessee beyond the actual value of the ground rent capitalized at the legal rate of six per cent., or where the rent reserved is one cent, the lessee often sublets by the words "demise, lease and to farm let" the demised premises from a specified day, for all the rest and residue, save one year, of the original term for years yet to come and unexpired in the premises, reserving (for there can be a reversion in the undisposed part of a term of years) to himself, his personal representatives and assigns, a rent generally in excess of what he has covenanted to pay to the original lessor. The sub-lessor covenants that he will warrant the property leased from all claims thereon, under him, and from all claims and demands thereon, for or in respect of any other or greater rent than that thereby reserved; there is, also, in these sub-leases, a covenant on the sub-lessor's part for the perpetual renewal of the sub-lease, reserving a reversion of one day to him in the premises. The other covenants on the part of the sub-lessor and the sub-lessee are those usual in leases for ninety-nine years.

In these leases the sub-lessor's interest is entirely of a chattel real nature, and not in fee simple.

If a lessee professes in a conveyance to make a lease for the *whole number* of years included in his term, it is



an assignment of the termor's interest and not a sub-lease, because it effectively exhausts his estate ; and this construction applies, though the termor may have reserved a right of re-entry, distress, or any of the controlling privileges which attach to reversioners.

But if the ostensible lease is for a *less* period than the number of years remaining of the term, whether a year or a day, or even a less period of time, the law will construe the conveyance a sub-lease, because the remaining period of the termor's estate establishes a reversion in him, and endues him with the capacity of a lessor, and secures to him the right of re-entry.

If the termor on his assignment, in the form of an under-lease, reserves a certain rent higher than that which he himself is obliged to pay to his lessor, the court will permit the assignee, in a suit against him by the termor, to deduct (recoup) in damages the amount payable to the original lessor, since the assignee is liable to that lessor for that amount.

In cases where the original rent covers a large piece of ground, it sometimes happens that there are many sub-leases reserving sub-rents on parcels of the original tract, which, however, cannot affect the rights of the original lessor ; so that while the original rent is collectable from any one piece or more, or from the whole tract, in the option of the landlord, the sub-rent is of course limited to its particular lot. If the original rent be collected from one sub-lessee, he has a right to require a contribution *pro rata* from the other sub-lessees, or he can set off the rent paid by him to the

original lessor against that due by him to his own landlord.

This matter of sub-leases is still further complicated by sub-leases under sub-leases, so that cases are frequently brought to light where the original rent, being insignificant in amount, on a large tract of ground has been lost sight of by the original lessor's heirs or assigns, by the personal representatives of the original lessee, who were apt to ignore it after assignment of their interest, though personally liable on the covenant for its payment, and by the numerous tenants and in some cases under-tenants, all dependent on the original lease.

The following is an illustration of the complexity arising from these successive tenancies: An original rent of a small amount may have been created ninety-nine years ago on an acre of ground. The original lessee or his assigns have long ago sublet the acre into small lots, and the acre, intersected by streets, is covered with lots, improved by houses owned by numerous sub-lessees, who pay sub-ground-rents to different assignees of the original sub-lessor. The assignees or representatives of the original lessee have long ago sold to different persons, and they to others, the numerous sub-rents; and perhaps sub-leases on sub-leases have been made. In the lapse of time the original lessee and his personal representatives or assigns have disappeared, and the insignificant original rent has dropped out of notice or fastened itself on some one lot. The renewal of the original lease on which all the titles depend

should be obtained by the representatives of the original lessee, who are in privity of estate and covenant with the original lessor. It would seem that the assignee of the reversion is required to execute only one renewal of the original lease, on demand by the termor, and payment or tendering in payment by him of the renewal fine and all arrears of rent, which are demandable without regard to lapse of time. In the case of numerous sub-leases, this question whether the assignee of the reversion can be required under the covenant of renewal, to execute more than one renewal lease, must necessarily arise. (See 57 Md. 624.)

If the original lessee's representatives should succeed in buying out the original rent and should thus acquire the fee, their leasehold estate would merge therein, and they could then convey the reversion in parcels, to the sub-lessees holding immediately under them. If the original lessee's representatives cannot be found, there seems no reason why a sub-lessee cannot purchase the original rent, and thus acquire the reversion in the whole tract. (See 58 Md. 325.)

On a bill being filed for the purpose of renewing the lease, a trustee might be appointed in the case of original leases, to represent the heirs of the original lessor or the assignees of the reversion, when they are numerous, or under disability, and renew the lease to the representatives of the original lessee, who could afterwards renew the sub-leases. But the form of these proceedings is suggested to the ingenuity of counsel by the circumstances of each case, whether for renewal of the lease or extinguishment of the rent.

It would seem that gross *laches* or negligence cannot be attributed to the owners of the leasehold in cases where the lessor's heirs or assignees cannot be found; still, as there is an obligation on the tenants to endeavor to obtain the renewal of the original lease, if they would continue in rightful possession, it is essential to conform as far as possible to the requirements of the original lease, as the titles of all parties dependent on it, under the decisions of *Banks vs. Haskie*, 45 Md. 207, and of *Myers, admr. of Presstman vs. Silljacks*, 58 Md. 328, would be in serious jeopardy. Cases involving these points are now pending in the courts.

#### IV.

##### ESTATE OF THE LESSOR.

The reversion is the corner-stone of the rights of the lessor. The rent reserved on a term is always incident to the reversion and follows it, as an incident follows its principal.

The reversion being in fee simple, to its incident the rent, are consequently attached all the qualities of fee simple property. This kind of rent is most favored by the common law, because it is in accordance with the fundamental distinctions of estates established by the feudal law, which required that fealty—from which even a shadow of fact has long since departed, but which is still applied as a test in determining questions of real law—should not be severed from the reversion; and

because to this fealty was attached the remedy by distress of common right, without express clause to that effect in the deed, as was required to create a rent charge.

In fact, the common lawyers considered this rent payable to the reversioner in return for the enjoyment of the land as the only proper rent; and rents seck and rent charges were regarded with disfavor as being in derogation of the feudal tenure, as no fealty was due to the owner of such rents. Watkins on Convey. 174; 1 Greenleaf's Cruise 19\* note; Alexander's Brit. Stat. 715.

The ground rent in Maryland is clearly a rent service; for every rent reserved on a lease is of that nature, Litt. sec. 214; as the tenant holds "by fealty (at least in fiction of law) and certain rent; and the rent is accompanied by that which is the incident of every rent service, namely, a right on the part of the lessor to 'distrain for it.'" Mayer vs. Ehrman, 57 Md. 622.

It follows that the estate of the lessor is subject exclusively to the law that governs the realty. The rent passes with the reversion by descent to the lessor's heirs at law, or goes to his devisees. It is subject to the law of partition among heirs, and is granted in fee simple independently of, but subject to the interest of the tenant of the demised premises. The wife of the lessor or of his assignee is endowable of a ground rent, and she should unite in a deed conveying it. Chew vs. Chew, 1 Md. 172; 58 Md. 330; 9 Md. 287.

In conveying a ground rent, the reversion in the land demised is what is conveyed, so that the form of a deed in fee simple is used, with the addition of a clause referring to the original lease to which it is subject, and of a statement of the quantum of the rent, and the dates of its payment, whether yearly, half-yearly or quarter-yearly. Latrobe's Justice, sec. 1978.

If the ground rent is a sub-rent, it is of course governed by the law of chattels real.

*Rents accruing before or after Owner's Death.*

Rents accruing before the owner's death go to his executor or administrator. *Martin vs. Martin*, 7 Md. 576. Rents accruing after the owner's death go to the heirs at law or devisees. *Getzendaffer vs. Caylor*, 38 Md. 280.

If the landlord is a sub-lessor and dies, the rents go in both cases to the personal representatives of the landlord; as the arrears of rent are not severed from the reversion, which is a chattel real under a sub-lease. It is not like a reversion under an original lease that descends to the heirs at law or devisees, while the arrears of rent accrued before the owner's death go to the personal representatives. *Alexander's Brit. Stat.* 360.

*Sale in Equity of a Reversion with Rent in Arrear.*

By sec. 3 of Art. 66 of the Revised Code, where there is a decree in equity for the sale of any reversion

in lands to which rent is incident, the Court may order any rent in arrear to be sold with such estate ; and the purchaser shall have the same right to recover such rent by distress, entry or action, as if he had been owner of the estate when the rent accrued.

*Rents due to Minors.*

The Revised Code, Art. 67, VII, secs. 21 and 22, provides that, the rents of real estate of minors, that may not be due at the death of such minor, shall, for the year in which such minor may die, be paid to the guardian, who may maintain distress or suit to recover such rent. If such guardian dies before the recovery of said rent, the executor or administrator of such guardian may recover the same by distress or suit. See, also, Revised Code, Art. 52, secs. 30, 31, 32, 35.

*Sales of Original Ground Rents by Orphans' Courts,  
and the Collateral Inheritance Tax.*

Formerly the Orphans' Courts of this State had no jurisdiction over real estate which includes ground rents ; but now by virtue of the Revised Code, Art. 50, secs. 199-206, and 1882, ch. 481, they have jurisdiction in cases where a will authorizes a sale of real estate by an executor ; where real estate has already been sold by the decedent but not conveyed by him ; and where the value of a decedent's real estate is appraised under \$2500. In this latter case, these courts have a concurrent juris-

diction with courts of equity to appoint a trustee to sell such real estate, and distribute the proceeds among the parties entitled. So in cases where ground rents of decedents are subject to the payment of the collateral inheritance tax to the State imposed by Revised Code, Art. 11, secs. 104-134, as amended by the Act of 1880, chs. 444, 455, these courts have jurisdiction to appoint appraisers to value such real estate, with a view of assessing the tax among the parties interested, and collecting it through the administrator of the estate.

## V.

### ESTATE OF THE LESSEE.

Leaseholds or terms for years in land like mortgages, and in English law, next presentations to churches, estates by statute merchant, statute staple and *elegit*, are denominated *chattels real*, and are so called because they are interests issuing out of, or annexed to, real estate, of which they have one quality, viz. *immobility*, which denominates them *real*, but want the other, viz. a sufficient legal indeterminate duration, and this constitutes them *chattels*. Under this latter denomination they are classed as *personalty*. 2 Bl. 386. It is because they thus partake of the nature and quality of both real and personal property, that they are, in the popular language commonly used in wills and in business transactions, described as "mixed property" or "mixed estates." *Taylor vs. Taylor*, 47 Md. 300.



The interest of the lessee or his assignee in the premises demised by a lease for ninety-nine years renewable forever is consequently a chattel real or leasehold. Such leasehold interest, by force of the terms of the lease, is assignable by deed duly executed, acknowledged and recorded as deeds of fee simple property, subject to the same rules as to notice from registration.

In assigning the leasehold interest the owner "grants and assigns" to the assignee, his personal representatives and assigns, the lot of ground, with its appurtenances, for all the residue of the term of years yet to come and unexpired therein under the original lease, with the benefit of renewal forever, subject to the payment of the rent reserved in the original lease and to its conditions. An interest in a term for more than seven years cannot be transferred or assigned except in the mode prescribed by our registry laws—that is, by a deed of assignment duly executed, acknowledged and recorded.

The leasehold estate passes by delivery of the deed of assignment, and, so far as the transfer is concerned, it is regulated by the law of conveyances; but, in the nature of its estate, leasehold property is controlled by the law that governs personalty. 58 Md. 330.

These chattels real being classed with personal property are assets in the hands of the administrator, distributable through the Orphans' Court to the lessee's personal representatives. They pass under a will of personalty without the requirement of witnesses to the will, as in cases of devises of fee simple property. 46

Md. 172; 43 Md. 346; 33 Md. 11; 9 Md. 288; Revised Code of 1878, Art. 50, sec. 145; Hinkley's Test. Law, sec. 70.

As the wife is not endowable of such leasehold property (*Spangler vs. Stanler*, 1 Md. Ch. Dec. 36), the owner thereof can assign it without his wife's uniting in the deed. From this latter fact, or for other reasons, some persons consider leasehold to have an advantage over fee simple property; which may account for leases for ninety-nine years renewable forever being sometimes made, reserving formerly one peppercorn, or now one cent, as rent, if the same should be demanded, merely to change the nature of the estate. These leases reserving one cent were sometimes made to foreign-born residents of this State, before the passage of the Act of 1874, ch. 354 (Revised Code, Art. 45, sec. 8), which permits aliens to take, hold, sell, &c., lands; and by this means the necessity for their being naturalized was obviated.

Though it is not necessary for the wife to unite in executing an assignment of the husband's leasehold interest, yet the husband must unite in that of the wife's, as she can make no conveyance of real or personal property (except dower) unless her husband unites in the deed. Revised Code, Art. 51, sec. 30.

Though the wife is not endowable of the leasehold property of her husband, yet, under the law of distribution, she is entitled to her share of such property as personalty. The husband is entitled to a life estate in her leasehold property if she die intestate leaving children, and, if she die intestate leaving no

children, he shall have her leasehold property absolutely (Revised Code, Art. 51, sec. 20). The wife, however, can cut him off entirely by her will, while he cannot deprive her of her legal rights in his property.

Both the reversion and the leasehold are the subject of mortgage and judgment liens, and are constantly being sold and transferred in the enforcement of such charges. *Myers, admr. of Presstman vs. Silljacks*, 58 Md. 330.

### *Judgments, Liens on Leasehold Interests.*

The Act of 1861, ch. 70 (Revised Code, Art. 64, sec. 128) provides that :

Every judgment thereafter to be rendered by any of the courts of law of this State, shall be and constitute a lien to the amount and from the date thereof, upon all leasehold interests and terms for years, of the defendants, on land, except leases from year to year, and leases for terms of not more than five years and not renewable, to the same extent and effect as liens are now created by judgment upon real estate.

Where a judgment has been recovered against a person, who subsequently acquires leasehold property subject to a mortgage executed, delivered and recorded simultaneously with the lease to him, the mortgage has priority over the judgment. *Ahern vs. White*, 39 Md. 409.

The judgment is a lien during the term. *Stockett vs. Howard*, 34 Md. 121. Final judgments, and not interlocutory judgments, are contemplated\* by the Act of 1861, ch. 70. *Davidson vs. Myers*, 24 Md. 538.

*Merger.*

The Revised Code, Art. 45, secs. 6 and 7, is as follows:

Where the reversion of any land expectant on a lease shall be merged in any other estate, the person entitled to the estate into which such reversion shall have merged, shall have the same remedy against the lessee, his representative or assigns, for non-payment of rent or other forfeiture, or for not performing conditions, covenants or agreements, as the person entitled to the reversion would have had if such reversion had not merged.

There shall be no merger by reason of any conveyance by way of mortgage, or assignment of mortgage, from the lessee of any ground demised for a term of years, his executors, administrators or assigns, to the lessor of such ground or premises (whether by original or sub-lease), his heirs, executors, administrators or assigns, and the same rights and remedies shall exist as if the grantee in such conveyance had no other interest or estate in the property than the one thereby conveyed.

T. intermarried with H. At the time of the marriage, the wife was possessed of a term of years renewable forever, in a city lot. After the marriage the husband purchased the reversion to the same lot. In the deed conveying the reversion there was no expression of a purpose to extinguish the term. T. afterwards died, his wife surviving him. *Held:*

That the interest of the wife in the property was not extinguished by *merger*, but survived to her on the

death of the husband ; and that such *merger* would be against the spirit and intention of the Act of 1853, ch. 245 (Revised Code, Art. 51, sec. 20) for the protection of the wife's property. *Clark vs. Tennison*, 33 Md. 85.

In this case, in the deed conveying to Tennison the reversion, there was no expression of any purpose or design to extinguish the term ; it was a mere conveyance of the reversion subject to the lease ; and in that respect it differs from the following case in which :

There was a conveyance of a leasehold interest to husband and wife, and a subsequent conveyance of the reversion to the husband alone, for the purpose of extinguishing the ground rent reserved by the lease and to the intent that the husband might hold the property in fee. *Held* :

That in the absence of proof to sustain a separate estate in the wife in the leasehold interest, to be upheld under the Acts of Assembly relating to the conjugal rights of married women, the husband had the right to extinguish such interest, and it was extinguished and merged by the conveyance of the reversion to him. *Lawes vs. Lumpkin*, 18 Md. 334.

### *Construction of a Will devising and bequeathing Real Estate and Leasehold Interests.*

T. at the time of his death and at the date of his will was seized and possessed of lands, consisting of a farm which he owned in fee, and of several houses and lots, some of which he owned in fee, and in others he

had but a leasehold interest under a lease or leases for ninety-nine years renewable forever. He also owned bank, insurance and railroad stock. By his will he devised and bequeathed as follows: 1. I give to my son J. T. in trust, etc., all my *real estate* (*houses and landed property*). 2. I also give and bequeath to my son J. T. all my estate (money, stock, etc.) personal and *mixed*, absolutely. *Held*:

That the leasehold estates passed to the son absolutely under the second clause of the will, and not to him in trust under the first clause of the will. *Taylor vs. Taylor*, 47 Md. 295.

### *Lease to Partners.*

Where a lease for ninety-nine years renewable forever was made "to L. R. and G. R., copartners, trading as R. & Son," it was held that the leasehold interest was in L. R. and G. R. as copartners and not as tenants in common; and it was treated as partnership assets. *Rust vs. Chisholm*, 57 Md. 376.

### *Acts of the Lessee that will not bind the Reversioner.*

An agreement by a lessee to abandon an easement can only operate to the extent of his own interest and estate, and does not bind the reversioner unless he be a party to it, or it be made with his knowledge and acquiescence. *Glenn vs. Davis, Trustee*, 35 Md. 208.

A lessee for years may create charges upon his estate which will not be defeated or destroyed by his

alienation of the term, even though the term itself may thereby be extinguished. But where the effect of such an agreement would be to change the rights and to limit and qualify the title of the reversion, it will not be allowed to bind the reversioner. 35 Md. 216.

*A Deed of Extinguishment of Rent defective for want of a Seal.*

The whole of a certain lot in Baltimore was leased, with a covenant for perpetual renewals, in 1777, by one N. R. to J. W., and the part thereof in question, by a course of regular assignments came into the ownership and possession of P. C., the father of R. C., the testatrix in this case, subject to one half of the rent reserved on the whole. R. C. being entitled to and in possession of the said property as the only child and representative of her father, afterwards in 1823 purchased the reversion therein from L. N. R., the sole heir of N. R., then deceased, and ceased to pay the rent from that time; but the written paper purporting to be a deed and duly recorded as such, by which the conveyance of the reversion was made, was not *sealed* by the grantor. In an action of ejectment brought in 1856, it was *Held*:

That the instrument intended to effect the transfer was wholly inoperative for that purpose, and whatever effect it had in establishing an equitable claim to the property, it was clear that the legal title was still outstanding; and that the property could not be regarded as real estate within the purview of this case. Colvin vs. Warford, 20 Md. 359.

## VI.

## RELATION OF LANDLORD AND TENANT.

The relation of landlord and tenant exists in these long leases, as in ordinary leases at common law.

The general rule is, that a party consenting to hold as lessee, cannot afterwards deny the title of his acknowledged landlord. *Isaac vs. Clarke*, 2 Gill 1.

The lessee cannot assert title in himself to the demised premises as against the owner of the reversion. He is estopped to deny his landlord's title. *Myers, adm'r of Presstman vs. Silljacks*, 58 Md. 334.

Where the original possession has commenced rightfully under a lease for a certain and definite term, with right of renewal, nothing is to be presumed to make a continuance of the possession *during the term* by those holding in succession under the original lessee, wrongful or adverse. In such case there must be proof of an open, notorious disclaimer of all holding under the landlord's title, and an adverse claim set up that would amount to a disseisin, in order to rebut the presumption that the possession has been in accordance with the title under which it commenced. 58 Md. 327 ; 57 Md. 624.

The rent reserved in the original lease binds the whole ground leased without regard to arrangements among the tenants of the demised premises. It is not competent for the lessee or his assignees to charge the whole rent upon one lot of that ground, to the entire



release or exoneration of other lots, all parts of the originally demised premises, without the assent of the owner of the reversion. 58 Md. 327. The assent of the owner of the reversion should be evidenced by a deed of record from him; for no acts in *pais* short of a deed can affect the rights of the lessor.

The fact that it does not appear that rent has been paid on a particular lot of the demised premises for a great many years, affords no sufficient ground for the presumption that a change has been made in the tenure, or that the right to receive the rent has been released or extinguished, or that it has been charged on one particular lot, in exoneration of the other lots in the tract. 58 Md. 328.

A release or extinguishment of the right to demand or receive rent on a renewable lease for ninety-nine years, can only be by deed; and the principle is well settled, that where the relation of landlord and tenant is once established under a sealed lease, the mere fact that the landlord has failed to demand the rent, will not justify the presumption that he has released or extinguished his right to it under the lease. 58 Md. 328; 57 Md. 623.

### *Apportionment of Rent.*

It has already been shown that the rents reserved under our peculiar leases, with covenants for perpetual renewals, are rent services. At common law, according to Littleton and Coke, a rent service is apportionable. Littleton says: "If a man which hath a rent service

purchase parcel of the land, out of which the rent is issuing, this shall not extinguish all but for the parcel; for a rent service in such case may be apportioned according to the value of the land." Coke says: "If a man maketh a lease for life or years, reserving a rent, and the lessee surrender part to the lessor, the rent shall be apportioned; so if the lessor recovereth part of the land in an action of waste, or entereth for a forfeiture in part, the rent shall be apportioned." 57 Md. 621.

The reasons given by Chief Baron Gilbert in his work on Rents, 172\*, for the apportionment of a rent service, are as follows:

"It is to be considered whether a rent service, incident to the reversion, may be apportioned by the grant of part of the reversion. It seems formerly to have been doubted whether upon such grant there could be any apportionment, or whether the whole rent should not be extinguished and lost; for since the reversion and rent incident thereto were entire in their creation, they thought it hard that by the act of the lessor they should be divided, and thereby the tenant made liable to several actions and distresses for the recovery of them. But this conception was too narrow and absurd to govern men's property long; for if I make a lease of three acres, reserving 3 shillings rent, as I may dispose of the whole reversion, so may I also of any part of it, since it is a thing in its nature severable; and the rent, as incident to the reversion, may be divided, too, because that, being made in retribution for the land, ought, from the nature of it, to be paid to those who are

to have the land upon the expiration of the lease. And hence it is that the rent passes immediately with the reversion, without any express mention of it in the grant. But the tenant has really no prejudice from such grant, because it is in his power—and it is his duty—to prevent the several suits and distresses by a punctual payment of the rent, and therefore he ought not to complain of a mischief which he has wilfully brought upon himself. Besides, formerly [before the enactment of 4 Anne, ch. 16, sec. 4] such grants could not take effect without the attornment of the tenant.

“If a lessee for life or years surrender part, or if he commit a forfeiture of part by making a feoffment or doing waste, the rent shall be apportioned—because the rent is a retribution for the land, and therefore must necessarily cease, according to the proportion of the land resumed by the lessor; for it were absurd that the lessor should have both the land and the retribution for it; but the whole rent is not extinguished, because, from the nature of the contract, the rent is to be paid in consideration of the enjoyment of the land, and therefore the tenant shall be obliged to pay the rent in proportion to the land he enjoys.”

Apportionment of rent among different lots of the whole tract has sometimes been made by the owner of the reversion (58 Md. 323), so far as the collection of the rent apportioned to the different lots is concerned; but if there be no deed showing that the reversioner has relinquished his right under the original lease as landlord over the whole tract, all the lots, or any one of

them, would still be subject to the terms and conditions of that lease. 58 Md. 325.

The lessor or his assignee sometimes accepts a surrender of the leasehold interest in a part of the demised premises, and then grants a new lease of the part surrendered, reserving often an increased rent. This surrender and new lease, however, do not extinguish the whole rent reserved under the original lease, but the part of the originally demised premises not surrendered, remains subject to its proportionate share of the original rent, according to its value in relation to the whole lot as originally demised. 57 Md. 622.

*Rent reserved on a Renewable Lease for Ninety-nine years, a Rent Service and Apportionable—Presumptions, where there has been no Demand and no Payment of Rent for Years—Substantial Sum in Apportionment of Rent.*

In September, 1782, J. E. H. leased to J. H. a lot of ground, now fronting about one hundred and sixty-nine feet on Howard Street, in Baltimore, for ninety-nine years with the usual covenant for perpetual renewal, reserving a yearly rent of fifteen pounds, nine shillings and four pence of the then current money. In January, 1828, J. E. H.'s executors, under a power in his will, sold and conveyed the reversion in this lot to a person who, on the 2d November, 1832, conveyed the same to L. S. L. S. on the 3d November, 1832, accepted a surrender from E. L. of his leasehold interest in a part of

the lot, about one hundred and twenty-two feet of its frontage; and on the same day, by two leases, leased for ninety-nine years renewable forever, sixty feet of the same to S. and S., and sixty-two feet and six inches of the same to E. L., reserving in each lease a yearly rent of \$300. L. S. never disposed of her reversion in the residue of the lot, consisting of a frontage of about forty-six feet. In June, 1864, G. M. E. purchased from the then owners of the leasehold interest, their lot fronting twenty-two feet on Howard Street, a part of the residue of the forty-six feet. The deed by which this interest was conveyed to G. M. E. recited that the grantors acquired their title under an assignment from a person named, in April, 1857, subject to a yearly rent of \$88, and they assigned to G. M. E., subject to the same rent; and it was assumed that G. M. E. derived his title from J. H., the original lessee of J. E. H., through *mesne* assignments and sub-leases. To a bill filed by G. E. M. to obtain a deed requiring C. F. M., who held the legal title under L. S.'s will, and the *cestuis que trust* under the will, to convey to G. M. E. the naked fee held by them in the twenty-two feet, or to execute to him a new lease thereof for ninety-nine years renewable forever, subject to a mere nominal rent, the defendants demurred; the demurrer was sustained, and on G. M. E.'s appeal, it was *Held*:

1st. That the rent reserved under the lease from J. E. H. to J. H. (the reversion of which L. S. acquired in 1832), was a rent service and not a rent charge, and that it was apportionable; so that by the surrender of the one

hundred and twenty-two feet from E. L. to L. S., the original rent reserved in the lease of 1782 was not extinguished, but was apportionable to the residue of the forty-six feet, whereof the reversion was owned by L. S. and by those claiming under her will, and that this proportionate part remained fastened upon the forty-six feet.

2d. That even if it were admitted that no part of the original rent had ever, in the memory of any one now living, been paid by any owner of the leasehold interest in the lot of twenty-two feet, and that that lot had always been treated as discharged and relieved from the payment of any portion of the original rent, nevertheless, the law, upon these facts alone, would raise no presumption of some act of the parties in interest relieving the lot of twenty-two feet from payment of any part of the original rent, or its extinguishment *quoad* that lot, and it being conceded that the relation of landlord and tenant once existed between the parties, under the lease of 1782, after the conveyances of 1832.

3d. That G. M. E. has a right to obtain relief by way of renewal of the lease of 1782, but he can only do this under a bill making proper averments, and bringing before the court the necessary and proper parties; but that G. M. E. would not be entitled to demand or receive a renewed lease, subject to a merely nominal rent; as the part of the original rent to be apportioned to G. M. E.'s lot will constitute a substantial, and not a mere nominal sum. Ehrman vs. Mayer, 57 Md. 612.

*Apportionment of Rent—Right of Lessor to sue in Covenant for the whole Rent, and recover the Part to which he is entitled.*

W. executed to C. a lease of certain premises for ninety-nine years, renewable forever, the lessee covenanting to pay a certain annual rent for the premises and all taxes thereon. W. sued C. in an action of covenant, and the breach alleged, was the non-payment of rent accrued due, and certain taxes that had been assessed. C. pleaded, among other pleas, that prior to the alleged claims of the plaintiff, the defendant conveyed all her interest in the leasehold premises to one L., in whose name the plaintiff thereafter rendered her bills for rent, and that afterwards, and prior to any of the supposed breaches of covenant on the part of the defendant, the plaintiff and L. jointly conveyed part of the premises covered by the lease to V. in fee, in consideration of \$2500 paid to the plaintiff. On a demurrer to this plea, it was held:

1st. That the rent was apportionable.

2d. That the plaintiff was entitled to sue in covenant for the whole rent, and recover the part to which she was entitled. *Worthington vs. Cooke*, 56 Md. 51.

*Apportionment of Rent in the case of lots of ground leased for ninety-nine years with redeemable rents, and Condemned for Public Purposes under the authority of the State.*

The late Henry White leased two adjoining lots of ground on Holliday street, in Baltimore city, running

eastwardly to Jones' Falls, to Adam Denmead and others, for ninety-nine years renewable forever, reserving the yearly rent of \$387 on one of the lots, and of \$160 on the other. The Commissioners for the Improvement of Jones' Falls, acting under an ordinance of the Mayor and City Council of Baltimore, authorized by the Act of 1870, ch. 115, condemned a strip or portion of the entire rear of both lots lying on Jones' Falls, and awarded the nominal damages of \$1 to the owners of the leasehold interest, and nothing to the owner of the reversion. The portion condemned was improved by a brick building standing in part thereon, and used by the lessees as foundrymen, for their boiler manufactory work. The lessees appealed from the award of the Commissioners to the Baltimore City Court, and the jury gave them damages in the sum of \$3000.

In delivering the opinion of the Court, Brown, C. J., said:

“The lessees have, by the terms of the leases, the right to buy out the respective lots and thereby extinguish the ground rents thereon, on the payment of a principal sum, the interest on which at six per cent. would be equivalent to said ground rents. The act of 1870, ch. 115, under which the condemnation is made, requires compensation to be made to the owner to the amount of the ‘true value’ of his property taken, and of the damages done to the rest of his property, while he is to be charged with the benefits which have accrued to such residue. Mr. White, by said leases, has not only fixed the annual rental value of the lots, but also the



value of the fee, by his covenant to sell it to the lessees on the payment of said principal sum. He is, therefore, not injured, if the residue of his property is made as valuable by the proposed improvement as the entire lots without such improvement, so that the ground rents continue to be equally well secured and his right remains unimpaired to collect the said ground rents from the lessees, without any abatement for the part taken. On the first point I entertain no doubt. The portion taken is a strip in the rear of the lots, wedge-like in shape, bounding on the Falls, leaving the front on Holliday street unchanged, with a depth of more than one hundred feet, well adapted for the erection of warehouses or for manufacturing purposes. The security which the remaining portion will obtain against injury from future inundations renders it, in my opinion, as valuable as the entire lots without such improvements, and leaves the ground rents as well secured as they were before.

“The next question is, I think, sealed by a great preponderance of authority. The condemnation for public purposes, under the authority of the State, of a part of a lot leased cannot be considered a violation of the covenant expressed or implied on the part of the lessor for quiet enjoyment, and does not constitute an eviction by the lessor of the lessee, and therefore does not at law effect an apportionment of the rent; *Patterson vs. City*, 20 Pick. 159; *Parks vs. City*, 15 Pick. 198; *Schuylkill vs. Schenck*, 57 Penn. 271; *Foote vs. Cincinnati*, 11 Ohio 408. But if part of a leased lot is condemned for public purposes, and the owner of the fee

is compensated for its value, equity will interfere and decree a corresponding abatement of the rent; *Wrightly vs. Pittsburg and Fort Wayne Railroad Co.*, 2 Grant 243; *Cuthbert vs. Kuhn*, 3 Wharton 357; and *Dyer vs. Wrightman*, 66 Penn. 428. In the case of *Warfield vs. the Mayor and City Council of Baltimore*, recently tried before me, Mr. Warfield was lessee under a lease for ninety-nine years renewable forever, of a lot of ground, part of which was condemned by the said commissioners, who allowed to the lessors the value of the part so taken, and I held, in conformity with these decisions last referred to (*Cuthbert vs. Kuhn*, 3 Wharton 357, and *Dyer vs. Wrightman*, 66 Penn. 428), and with my own view of the law applicable to the cases, that Mr. Warfield was entitled to a proportionate abatement of his rent. The lessors, by a covenant with the lessee, had fixed the value of the fee at a sum which at the rate of six per cent. would produce the amount of the rent, and I held that the lessor, by accepting from the city the value of the part taken, bound himself to make a proportionate abatement of the rent. But in this case, as Mr. White has received nothing from the city, he is not bound to make any abatement of the rent, and his right to collect it remains unimpaired."

But *quare*, whether the principle of this decision is correct under Maryland law. Is not the apportionment of a rent service reserved on a lease, based on the presumption that the tenant enjoys the land demised during the term, in consideration of the payment of the rent; and if the tenant without his default loses the use

or enjoyment of part of the land, does it not follow that there should be a corresponding abatement of rent, without regard to compensation to the reversioner, with which the tenant has no concern? See Gilbert on Rents, 186\*, etc.

### *Renewal of Lease.*

One of the most important decisions of the Court of Appeals on the subject of leases for ninety-nine years renewable forever, is that of Banks vs. Haskie, 45 Md. 207. This case decides, that where the original term of a lease for ninety-nine years renewable forever, has expired, and the owner of the leasehold interest has failed to obtain a renewal *within the term*, according to the literal wording of the covenant for renewal, equity will relieve him, and compel the owner of the reversion to execute a new lease; *provided* the application be made in a reasonable time, and all arrearages of ground rent and the renewal fine be first paid.

The facts were as follows: The original term of ninety-nine years expired on the 18th January, 1871. In 1848 Banks had purchased the reversion and rent in the demised premises. No bill for the ground rent was presented after 1866, and the delay and failure to pay the rent were, to a considerable extent, attributable to the oversight and negligence of Banks himself or his agent, and not solely to the fault or neglect of Haskie. In 1867, Haskie, the husband of the appellee, purchased the leasehold interest in the same premises for \$3400. He died in 1868, and in 1870

his widow became the owner of the leasehold. In May, 1874, Banks brought ejectment against the appellee to *recover the property*, on the ground that the lease had fallen, not having been renewed within the term, and that he, as the owner of the reversion, had a right to re-enter and hold the premises as if the lease had never been made. On the 24th October, 1874, the appellee filed her bill in equity for a renewal of lease and an injunction to restrain the ejectment. The court below granted the relief asked by the complainant, and passed a decree directing Banks, upon Mrs. Has-kie's paying the renewal fine of two pounds ten shillings sterling, with all arrearages of rent due under the lease up to the time of such payment, and all necessary costs and charges, to execute to her a new lease for the premises for the term of ninety-nine years, to commence at the end of the original term, at the same yearly rent and with the same agreements and covenants as were mentioned in the original lease. This decree was affirmed by the Court of Appeals. But the Court was careful to declare, that *gross laches* or negligence on the part of the owner of the leasehold interest, in making his demand for a new lease *after the term has expired*, and in seeking his remedy, will, as in other cases of gross *laches*, be an insuperable bar to relief in equity. This is affirmed in Myers, adm'r of Presstman vs. Silljacks, 58 Md. 321.

The Court in this latter case further declares the law on this matter to be as follows: A Court of Equity will, in a proper case, and upon seasonable application, in

the exercise of an established jurisdiction, decree specific performance of the covenant to renew a lease, though the term has expired and the party has failed or neglected to apply for renewal, according to the terms of the covenant. In such case, time is not regarded as of the essence of the contract, and a Court of Equity looks rather to the objects and intention of the parties, than to the strict letter of the contract. 58 Md. 329.

The leading objects and purposes of a lease for ninety-nine years renewable forever, are not difficult to discover, and a Court of Equity should be liberal in applying its principles of specific performance, in order to secure the accomplishment of those objects. The main objects, doubtless, of the lessor in the making of such a lease, are the inducement thereby offered to improvement, and the security and receipt of a clear annual rent and the fine for renewal (in this case the lease in question was from Ann Fell to Alexander McMechen, dated the 5th July, 1769, and the fine for renewal was one year's rent), based upon the full recognition of the reversionary estate in the lessor and those who may claim under him; while, on the part of the lessee, the object of the contract is the perpetual enjoyment of the land, with an encouragement to make such improvements as he would not be justified in making but with a view to, and the security for, such perpetual enjoyment. But while such are the objects in view in the making of these leases, and such the liberal principles of a Court of Equity that will be applied for their accomplishment, there are well-defined limits to

those principles which cannot be transgressed ; and in their application the court must ever be careful that it does not afford too great immunity to those who may be disposed to be negligent, or by too great an indulgence to these applications, introduce confusion and uncertainty in respect to the titles of an important species of property. 58 Md. 330.

Where the application for renewal is made within a reasonable time, and upon continued acknowledgment of the tenure created by the original lease, there, none of the uncertainties and embarrassments, which might and would likely exist in other condition of things, would or could intervene to make it improper for a Court of Equity to grant relief. 58 Md. 331.

The application for relief must be made within a reasonable time ; but what will be a reasonable time must, to a considerable extent, depend upon the special circumstances of each particular case. 58 Md. 333.

A Court of Equity will not enforce the specific execution of a covenant for renewal in a lease for the term of ninety-nine years renewable forever, where nearly twelve years were allowed to elapse after the expiration of the term before application was made, and the complainant had openly repudiated all obligations and relations as tenant, had paid no rent prior to the expiration of the lease and none since, and had persistently asserted, since the expiration of the lease, an adverse title to the lot in himself as against the owner of the reversion. In such case a Court of Equity has no hesitation in refusing relief. 58 Md. 333-335.

The case of Presstman vs. Silljacks, reported in 52 Md. 647, of which the case of Myers, adm'r of Presstman vs. Silljacks, 58 Md. 319, is the sequel, was as follows:

*Case where an Original Lease was ignored; and what came of it.*

Property in the city of Baltimore was leased for the term of ninety-nine years renewable forever. The leasehold interest became vested by *mesne* assignments in one Steele. By proceedings for the sale of the real estate of Steele, a decree was obtained and a trustee was appointed to make the sale. This leasehold estate was included in the decree for sale, and was sold by the said trustee to Geo. Presstman. In the deed to Presstman it was spoken of as real estate, but by the special description of it in the deed and the references it was fully identified as this leasehold property. In the year 1852, Presstman, supposing himself to be the owner of the fee under said deed (although in fact his estate then consisted of less than seventeen years of unexpired leasehold with the privilege of renewal, the original lease having been made in 1769), executed a lease of the property for the term of ninety-nine years renewable forever, and by *mesne* assignments the interest of his lessee became vested in John Silljacks, who paid the rent to Presstman, until the year 1877, when the term of Presstman was found to have long expired, and the reversioner's title and rights were discovered. Silljacks

then paid the reversioner a sum of money for arrearages of rent, and in consideration of a further sum the fee was conveyed to him. Silljacks afterwards refusing to pay the rent reserved in Presstman's lease, the latter levied two distresses therefor. Silljacks replevied the property distrained in each case before a justice of the peace. One justice decided in favor of Silljacks and the other in favor of Presstman. Both appealed to the Baltimore City Court, where the judgment in each case was adverse to Silljacks, who paid the judgments and costs. In an action of trespass, *quære clausum fregit*, brought by Silljacks against Presstman to recover for the entry thus made in making the distresses, and the payments to which he was constrained, it was *Held*:

1st. That Presstman did not take a fee in the property under the trustee's deed to him.

2d. That the description of the property in that deed was such as to identify it as the leasehold property which Steele had bought by deed duly recorded; and the whole title being of record, all the parties in interest were affected with notice; so that however ignorant Presstman was at the time he leased the property, of the exact nature of his estate, his lease did in fact operate no further than an assignment of the residue of his term.

3d. That Silljacks was not estopped from denying the title of Presstman as his landlord, that title at the time of his so denying it having expired by effluxion of time.

4th. That his paying the reversioner the arrearages of rent for the whole period of his holding under



Presstman after the latter's title had expired, together with the rent for the time he repudiated Prestmann's title, was a recognition of the reversioner's right, and equivalent to an abandonment of possession under Presstman.

5th. That the purchase of the reversion by Silljacks was in self-defence, and Presstman had no superior right over him to buy it.

6th. That if Presstman had any equity under his lease, and was not barred by *laches* as against the reversioner, to have through a Court of Equity his lease renewed (and in Myers, adm'r vs. Silljacks it was afterwards decided that he was barred), Silljacks took the fee subject to that equity.

7th. That Silljacks was entitled to recover, unless the judgments rendered against him in the replevin cases, growing out of the distresses, were to be regarded as adjudicating the question so as to prevent his recovery for the entry under the distress proceedings.

8th. That to render those decisions *res adjudicata*, and as such an effective bar in a suit wherein the same matter was brought in issue, the tribunal making the decision must have jurisdiction over the whole subject-matter, and be competent to decide all the questions arising in the cause pertinent and important to the proper judgment in the premises.

9th. That a justice of the peace had no power to determine whether Presstman's title had or had not expired; and the Baltimore City Court, sitting as an appellate tribunal, though hearing the case *de novo*, had

no more power or jurisdiction in that regard than the justice of the peace.

10th. That it made no difference, so far as this case was concerned, that it did not appear in the record of those proceedings, that this question was raised before the justices or in the Baltimore City Court.

11th. That a prayer by the plaintiff defining the measure of damages to be the amount of the judgments and costs on the distresses, was properly granted. *Presstman vs. Silljacks*, 52 Md. 647.

After the Court of Appeals had decided the action at law in the case of *Presstman vs. Silljacks*, in favor of the defendant as stated, *Presstman* filed his bill in equity against *Silljacks*, who had purchased the reversion in the lot of ground in question from the assignee of the original lessor, to obtain the specific execution of the covenant of renewal contained in the lease. The Court below passed a decree dismissing the bill, being of opinion that the complainant had not only been guilty of *laches* in omitting to claim a renewal within a reasonable time—twelve years having elapsed since the term expired—but had maintained an active resistance to his landlord after knowledge of this reversionary interest, which deprived him of all claim to favorable consideration. The Court above affirmed this decree in an able opinion reported in *Myers*, adm'r of *Presstman vs. Silljacks*, 58 Md. 319, which opinion has been largely quoted from in these pages.

*Construction of a Covenant to renew a Sub-lease, in which it was not expressed in terms when the renewed Sub-lease should commence.*

The P. H. Co. sub-leased certain parcels of ground to A. J. G., who afterwards assigned his interest to J. B. The deeds of sub-lease contained a covenant for renewal in these terms: "and also, that at any time during the continuance of this demise, the P. H. Co. aforesaid or its assigns shall and will, on payment to it or them of ten dollars as a fine therefor, execute and deliver or cause and procure to be executed and delivered to the said A. J. G., his executors, administrators, or assigns, at his or their request and cost, a new sub-lease of the above described parcels of ground and premises, or either of them, reserving to the said lessor a reversion of one day therein, which new sub-lease shall be subject to the same rents and contain the like covenants as are herein contained; and in particular a covenant for perpetual renewments, so that this lease and the estates created thereby and each and every of them shall be renewable, and renewed from time to time forever." *Held:*

1st. That like all other contracts, the real intention of the parties to this covenant must control its interpretation.

2d. That the purpose of the covenant was to preserve the lease for its original term, and the estates which it created, and to continue them forever.

3d. That to accomplish this and carry out the intention of the parties, a new lease, if required under

this covenant, should be made, to commence and take effect from the expiration of the original term.

4th. That the insertion of words in the covenant stating expressly when the new term should commence was not necessary, if by other terms and provisions, and the character of the whole instrument, the same intention was made to appear.

5th. That such intention was manifest upon the face of the said conveyance.

Boyle vs. Peabody Heights Co., 46 Md. 623.

On a bill filed by J. B. against the sub-lessor, claiming a renewal of said sub-leases to take effect at once, it being alleged that there were certain inaccuracies in the description of two of the lots, which the complainant was entitled to have corrected, it was *Held* :

That J. B. was not entitled to relief upon this ground without making the sub-lessee a party to the bill, and requiring him to be united in the new lease. 46 Md. 624.

## VII.

### TAXES.

The general principle is, that where a lease is silent upon the subject, the landlord is bound to pay all State, county or municipal taxes and assessments upon the property. P. W. & B. R. R. Co. vs. Appeal Tax Court, 50 Md. 411; Taylor L. & T. sec. 341.

In some of the earlier leases, by special agreement there was inserted a proviso that the lessee could retain

out of the annual rent a specified sum as the proportion of the assessment or tax on the interest of the lessor in the premises. 1 Harris' Entries (1801) 76; Colvin's Magistrate's Guide (1805) 297; The Clerk's Magazine and Complete Practical Conveyancer (1808) 222.

By the Acts of 1785, ch. 53, and 1812, ch. 191, sec. 36, it was provided, that the tenant or person holding any leasehold estate shall "pay to the collector of taxes the sum valued for the estate or interest of any landlord," or as it is now codified in sec. 65 of Art. 11 of the Revised Code, "the taxes levied on the demised premises, and shall have his action against the landlord for the sum so paid, or may deduct the same out of the rent reserved, *unless otherwise agreed between the lessor and lessee.*" This law was intended as a means of facilitating the collection of taxes; there being many cases where the landlord might not be known or might be absent. P. W. & B. R. R. Co. vs. Appeal Tax Court, 50 Md. 411.

The tenant in possession is the person chargeable by law with the payment of the taxes imposed upon the land he occupies, "without its operating, however, to alter the nature of contracts between landlords and tenants." Act of 1817, ch. 148, sec. 4, relating to Baltimore city. See Mayor and City Council of Baltimore vs. Chase, 2 G. & J. 379.

In 1780, R. demised to L. a tract of land for ninety-nine years at a certain annual rent, and covenanted to renew the lease, upon the payment of a year's rent as a fine, for other ninety-nine years, to commence from

the expiration of the first term, and also that L. should quietly enjoy the premises upon payment of the rent. The lease reserved the usual right to re-enter for non-payment of rent, but contained no agreement in relation to the payment of taxes. In an action of covenant brought upon this lease in 1828, it was *Held*:

That the taxes assessed upon and chargeable against the premises were due from and payable by the lessee or his assigns; and that he could not set off a payment of taxes against a claim of rent. *Hughes vs. Young*, 5 G. & J. 67. In *P. W. & B. R. R. Co. vs. Appeal Tax Court*, 50 Md. 412, the Court says: "It was contended on behalf of the plaintiff in the case of *Hughes vs. Young*, that as the lease was dated in 1780, the covenant for the payment of a specific sum as rent should be construed with reference to the law in existence at the date of the lease, and that the provision of the Act of 1812 should not apply to it." It was conceded in the case in 5 G. & J. that "if the lease had been made since the Act of 1812, the landlord would be responsible for taxes imposed under that Act."

Where the Western Maryland Railroad Company held and occupied real property under an ordinance of the Mayor and City Council of Baltimore, which stipulated for a formal lease from the city for ninety-nine years renewable forever, at a certain rental, of the property in question to the company, but no such lease had been executed, though the city was willing to execute it, the company being entitled to receive it; in proceedings under the Act of 1876, ch. 260, sec. 28, for the

general valuation and assessment of property in this State, it was *Held* :

That the company must be regarded as the substantial owner of the leasehold interest in the property, and was liable to be assessed with the value of the leasehold interest, subject to the rental fixed by the ordinance. The reversion belonging to the city was not liable to be taxed, under the exemption from taxation of property belonging to an incorporated city. Appeal Tax Court vs. Western Md. R. R. Co. 50 Md. 276.

Where the City of Baltimore had leased two lots of ground to the P. W. & B. R. R. Co., for ninety-nine years renewable forever, and which lots were improved by the lessee, by the erection thereon of depots, shops, etc., *Held* :

That under the Acts of 1876, ch. 159, for the assessment and taxation of the property of railroad companies in this State, and ch. 260, for the general valuation and assessment of property in this State, the P. W. & B. R. R. Co. should be assessed only with the value of the leasehold estate, subject to the rent reserved in the lease ; the interest and estate of the city in the premises being exempt from taxation by the Act of 1876, ch. 260, sec. 2, as property belonging to an incorporated city. P. W. & B. R. R. Co. vs. Appeal Tax Court, 50 Md. 397.

The covenant of the lessee in the leases from the city, "to pay all taxes, assessments and public dues whatever, levied, charged or assessed, or that may hereafter be levied, charged or assessed, on the prem-

ises, or the yearly rent issuing therefrom," is but the usual covenant inserted in leases for the benefit and exoneration of the lessor; and it has reference only to such taxes and assessments as might affect the reversion and its incident, the rent reserved under the lease. 50 Md. 397.

The improvements placed upon the two lots of ground leased from the city by the P. W. & B. R. R. Co. were subject to separate assessment, and as they were placed upon the demised premises by the lessee for its own use and benefit, they were properly assessed to the lessee at their full assessable value. 50 Md. 398.

All State and county or municipal taxes are liens on the real estate of the party indebted, from the time the same are levied. Revised Code, Art. 11, sec. 46. Consequently, in selling real and leasehold property for taxes in arrears, the collector of taxes is authorized to sell both the reversionary and leasehold interests, if necessary, in order to satisfy the amount of taxes and costs, charges and interest, free from ground rent or liens on the property. City Code of 1879, Art. 49, sec. 47; *Abrahams vs. Tappe*, 60 Md.

### *Paving, etc., of Streets.*

It was decided in 1857, under the Acts then in force, that the lessee for ninety-nine years, or for ninety-nine years renewable forever, and not the owner of the fee, was the owner or proprietor to assent to the paving of streets in the City of Baltimore. *Holland vs. Mayor and City*



Council of Baltimore, 11 Md. 186; Mayor and City Council of Baltimore vs. Bouldin, 23 Md. 329.

The Act of 1874, ch. 218, sec. 4, relating to grading, paving, etc., streets in Baltimore city, provides that a tenant for ninety-nine years renewable forever, or the executor or administrator of such tenant, shall be deemed and taken as an owner, for the purposes of an application to the Mayor and City Council, authorized by that Act; and the application of any such person shall bind the property so represented for any assessment or tax made under any ordinance passed in pursuance of the provisions of that Act. To the same effect is the city ordinance, sec. 33 of Art. 47 of the City Code of 1879.

## VIII.

### **DISTRESS, RE-ENTRY, AND ACTIONS ON COVENANTS.**

The remedy by distress belongs as of common right to leases of this sort, whenever the rent is in arrear in whole or in part. And it is as a rule expressly stipulated for, in these renewable leases for ninety-nine years. It is not necessary to consider here the mode of enforcing this familiar remedy under the provisions of the Code, or the proceedings in replevin that often follow the distress.

Rent is not *per se* a lien on goods found on the premises; it binds as a lien only when the goods are seized under a distress. Buckey vs. Snouffer, 10 Md. 149.

The remedy by distress for rent in arrear is not within the Act of Limitations. *Longwell vs. Ridinger*, 1 Gill 57.

Interest on rent in arrear, though it cannot be distrained for, is recoverable in an action of debt or on the covenant to pay rent; to which actions the Act of Limitations applies. *Dennison vs. Lee*, 6 G. & J. 383.

In paying the debts of a decedent, an administrator is required to pay, first, all taxes due and in arrear from the decedent, and then claims for rent in arrear against the decedent, for which distress might be levied by law, next have preference. Revised Code, Art. 50, sec. 173.

If the claim against a decedent's estate be for rent, there shall be produced the lease itself, or the deposition of some credible witness or witnesses, or an acknowledgment in writing of the deceased, establishing the contract and the time which hath elapsed during which rent was chargeable, and a statement of the sum due for such rent, with an oath of the creditor endorsed thereon, "that no part of the sum due for said rent, or any security or satisfaction for the same, hath been received, except what (if any) is credited," and if the creditor be an assignee, there shall be such oath of the original creditor with respect to the time of the assignment. Revised Code, Art. 50, sec. 156.

The proof of a claim for rent in arrear, so as to render the same a preferred claim, shall be the proofs and vouchers for rent aforesaid; and proof that the claim is such that a distress therefor might be levied on said deceased's goods and chattels in the hands of the

administrator; but the preference given for rent is not to impair the landlord's right of distress if he thinks proper to exercise it. Revised Code, Art. 50, sec. 157.

A landlord is not entitled to priority for his rent in the distribution of an insolvent's estate, where he has levied a distress *after* the application of the tenant for the benefit of the insolvent laws. Buckey vs. Snouffer, 10 Md. 155.

The stat. 8 Anne, ch. 14, sec. 1, in force in this State, provides, that on the property of a tenant being seized under execution, the person at whose instance the property is taken, before the property is removed for sale, shall pay to the landlord of the premises all arrears of rent due; provided they do not amount to more than one year's rent. See 2 Poe's Pl. and Pr., secs. 632-638. Alexander's Brit. Stat. 680.

The Revised Code, Art. 67, VII, sec. 23, provides that: Whenever any landlord shall give notice of rent due, to the sheriff or constable, who may be about to sell the goods and chattels of his tenant under execution, there shall be appended to said notice an affidavit of the amount of his rent claimed to be due.

### *Re-entry.*

The proviso in the renewable leases for ninety-nine years, that the lessor shall have the privilege of re-entering into the demised premises and having them again as in his former estate, on default of the lessee in the payment of the rent after a specified time; and that

then and in such case the lease shall thenceforth be utterly void and of none effect, is frequently availed of by the owner of the reversion.

The lessor was much embarrassed at common law in availing himself of this privilege of re-entry, which is usual in most leases; and he was obliged to observe many precise formalities, which the law exacted in its aversion to forfeiture of estates. These ceremonies thus “fenced” in the lessee’s interest in his term.

The law required that the rent should be previously demanded, for it would not prescribe a forfeiture in favor of one who was too remiss to require the condition to be performed. The land was the site ordained for the demand, at the front door of a house if a house existed upon it, and if none did, then at a gate, or highway running through the land, or at some notorious place upon it; and it was to be demanded at these places although neither the lessee, nor any other person might be on the premises. The rent was required to be demanded precisely on the day when it was due, and a convenient time before sunset, so as to give the termor an opportunity of counting it to the lessor; although it was only actually due at the last moment of the natural day. The lessee, however, could tender the money to the lessor either on or off the land at any period of the last day, since the payment was prescribed indefinitely on that day. If the rent was reserved to be paid at any other place than the land, the demand was to be made at that place. It was required to demand the *precise* sum due; a demand for any amount beyond that ex-

actly payable rendered the whole formality nugatory, so scrupulously did the law regard forfeitures.

If the lessor had successfully passed over this cautious ground of ceremonies, he might enter upon the land and become reinstated in his original rights. If the lessee, however, resisted his entry, he was compelled to resort to an action of ejectment, with all its old routine of process.

At common law, in ejectments brought under the proviso of re-entry on non-payment of rent, the courts exercised a discretion of staying proceedings against the termor, when either during the pendency of the action or before execution executed, he tendered to the lessor the rent in arrear. Courts of Equity completed the resource of the termor by restoring him to the possession of the land at any time after execution executed, upon payment to the lessor of the arrearages.

Thus continued the law upon this proviso of re-entry until the Statute of 4 Geo. II, ch. 28, sec. 2, which enacted, that where such a right of re-entry was provided for, and a half year's rent should be in arrear, and no sufficient distress could be found on the premises, a service of declaration in ejectment on the tenant, or if the premises were unoccupied, then the declaration to be set up on the house or on some notorious part of the land, should avail instead of all the formalities of demand and re-entry required under the law of ejectment at common law ; and that if judgment should be had against the casual ejector, or the plaintiff should be nonsuited for want of the defendant's confessing lease, entry and

ouster, that the plaintiff should have execution on satisfying the Court by affidavit that one half-year's rent was in arrear and that no distress countervailing the arrears of rent was to be found on the premises. If, however, the defendant appeared and confessed and joined issue, the plaintiff was obliged to prove the default of the tenant, and that no adequate distress was to be found on the premises.

The fourth section of the statute declared, that at any time before trial, *i. e.* before a jury was sworn, if the lessee should bring into court or tender to the lessor the arrearages of rent together with all costs of the proceedings, then the proceedings should be stayed, and the tenant hold the demised premises under the lease already made.

If the lessee permitted execution to be executed under the ejectment, the statute awarded restitution of the premises to him by application to a Court of Equity, provided that application were made within six months after the execution executed. Beyond that time a Court of Equity could grant no petition for relief in such a case. If relief were granted, the lessee was obliged to pay all arrearages of rent then due, and all costs incurred in the ejectment proceeding.

The statute declared that six months' rent should be in *arrear*—rent cannot be said to be in arrear until after it is payable—and hence when rent is payable annually, ejectment cannot be brought until after the year.

Leases in England generally required the rent to be payable quarter-yearly ; hence the term of six months

was introduced into the statute. If the provisions of a lease authorize re-entry only after the rent has been in arrear a longer period than six months, one year or any other space of time, the statute is subordinate to such stipulation, and can sanction no earlier measures; it only requires that *at least* six months' rent must be in arrear.

The statute refers only to recoveries for non-payment of rent. It was in force in this State up to the time of the passage of the Act of 1872, ch. 346, which re-enacted it in substance with improvements. For the construction of this statute, see Alexander's Brit. Stat. 711; 1 Poe's Pl. 195; 2 Poe's Pr. sec. 482, &c.

*Difference between Breach of Covenant for Payment of Rent, and the Condition that stipulates that on such default the Lease shall be void.*

A difference exists between provisos on non-payment of rent or breach of covenant in a lease, which confer a right of re-entry; and those which on that default or breach stipulate that the lease shall be void.

In the first case, if a right of re-entry accrues, and the lessor does any act then which recognizes the continuing tenancy, the right of re-entry will be considered to have been waived by him. The lease is supposed to have duration until the lessor's re-entry, which, being an optional act, the right to do it may, of course, be dispensed with by him. But the lessor cannot be said to compromise his right of re-entry by any act of recognition

of the tenancy, unless he is aware that the breach or default has occurred, and that a right of re-entry has arisen to him.

But if on such breach or default, the lease is declared to be null and void, it expires on such an event, and it would seem that no recognition or admission by the lessor can revive it.

As is said by Mr. Poe in his work on Pleading and Practice (2 vol. sec. 496), "the legal effect of this covenant is to divest absolutely the title of the lessee upon the happening of such contingency; and hence in such case the right of the lessor to recover by ejectment the demised premises is clear. Equity may perhaps, under certain circumstances, relieve against the forfeiture in such cases as these; but at law, the title of the lessee will undoubtedly be divested by breach of such condition subsequent." See also Alexander's Brit. Stat. 714; 1 Poe's Pl. 195.

1872, *ch.* 346.

By the Act of 1870, ch. 420, and of 1872, ch. 346, sec. 1, all the figments and fictions of the common law action of ejectment were happily abolished. The casual ejector, the confession of lease, entry and ouster are no more required. John Doe and John Denn, Richard Roe and Richard Fenn, the "loving friend" of so many distressed tenants, have at last, after a fictitiously litigious existence of centuries, departed this life never to rise again.

The Act of 1872, ch. 346, sec. 2, has re-enacted the provisions of the Statute of 4 Geo. II, ch. 28, sec. 2, and



effectively adapted that remedy for the right by law to re-enter demised premises for non-payment of rent, to the simplified proceedings in ejectment. This Act is codified in secs. 13 and 14 of Art. 64 of the Revised Code.

*Re-entry under Stat. 4, Geo. II, ch. 28, and the Act of 1872, ch. 346.*

A lease for the term of ninety-nine years renewable forever is within the operation of the statute of 4 Geo. II, ch. 28, relating to actions of ejectment by landlords on the non-payment of rent. *Campbell vs. Shipley*, 41 Md. 81.

A lease giving the right of re-entry if the rent be in arrear for one year, "the same being first lawfully demanded," confers a right to re-enter within the meaning of the statute, which will support an action of ejectment without a previous demand of the rent. 41 Md. 81.

A lessee for the term of ninety-nine years renewable forever, died, and S. entered upon the premises as a trespasser or disseisor. Before his possession had ripened into a perfect title by the lapse of twenty years, he voluntarily administered upon the estate of the lessee, and assigned and took a re-assignment to himself of the lease, by deeds which he placed upon record, and in which the title of the lessor was carefully recited and recognized. S. died leaving a will by which he gave all his estate to his wife, with remainder in specific por-

tions to his children. After his death letters testamentary on his estate were granted to his wife as executrix under the will. In an action of ejectment under the Act of 1872, ch. 346, sec. 2, brought by the grantee of the reversion against the parties in possession, claiming under S., it was *Held* :

1st. That by administering on the estate of the lessee and placing the deeds of assignment on record, S. became the tenant for the lessor, and his holding thenceforth until his death was consistent with the title of his landlord.

2d. That where the relation of landlord and tenant has been created, the possession of the tenant is consistent with the title of the landlord, and the mere non-demand and non-payment of rent are not sufficient to bar the landlord's title, whatever effect they may have if long continued, upon the right to recover the rent.

3d. That not only is the tenant precluded from relying on his possession to bar his landlord, but also all persons who come in under or derive possession from the tenant in any manner, however remotely.

4th. That in cases like this there must be at least some proof of an actual ouster to rebut the presumption that the possession was in accordance with the title. 41 Md. 81 ; *Myers, adm'r of Presstman vs. Silljacks*, 58 Md. 327.

*Recovery of Possession by Owner of Reversion after a Lease has expired.*

After the term for ninety-nine years has expired, and there has been no renewal within the term, nor within a reasonable time thereafter, and gross *laches* or neglect, or resistance to and defiance of the landlord's rights, shall have barred the tenant from such renewal in equity, and the occupant of the premises should refuse to surrender them to the owner of the reversion, the question then arises as to the reversioner taking possession. His remedy against the occupant of the premises is that furnished by the action of ejectment under the Act of 1872, ch. 346. *Myers, adm'r of Presstman vs. Silljacks*, 58 Md. 331.

The summary proceeding furnished by Art. 67, VII, of the Revised Code (1882, ch. 355) against a tenant holding over the regular end of his term, could hardly be held to apply to a case of this sort, for obvious reasons; among others, on account of the question of notice, and especially that of title, which would arise, in which case the justice would have no jurisdiction to proceed.

*No Interest of a Lessee in Demised Premises subject to Execution, by reason of his Failure to pay Rent, and being merely Trustee.*

B. having purchased at sheriff's sale a lot of ground sold under execution upon a judgment of B. against C. in 1859, and C. having refused to deliver possession of

the premises, application was made to the court by B. under the Act of 1825, ch. 103 (Revised Code, Art. 64, sec. 145), for a writ in the nature of a writ of *habere facias*. It appeared at the hearing of said application that C. F. M., trustee of the real estate of the wife and children of C., had executed to said C. in 1853, a lease of the trust property for ninety-nine years, reserving a rent certain, and containing a covenant of re-entry for non-payment of rent; and also an express covenant that in case the rent reserved should be in arrear and unpaid for the space of six months, the lease should be void; that in 1854, C. was appointed trustee in the place of C. F. M., and C. and his wife and children were residing upon said lot at and before the date of the lease, and had continued to reside thereon up to and pending the application, but had at no time paid rent. *Held*:

1st. That by the terms of the lease, the legal estate of C. in the term had ceased by reason of his failure to pay the rent reserved, for the space of six months before the judgment was obtained against him.

2d. That at the time of the seizure and sale by the sheriff, C. had no title to the lot of ground liable to satisfy the execution, his possession of the property being only as trustee. *Cooke vs. Brice*, 20 Md. 397; *Alexander's Brit. Stat.* 714.

*Relative Rights of Lessor and Lessee under a Lease  
after Re-entry by Lessor's Assignee.*

The owner of land bounding on the basin at Baltimore, leased the same for ninety-nine years renewable forever, reserving the right to distrain and re-enter; and granted to the lessee and his assigns the exclusive right of extending one hundred and four feet into the water, any and every part of said land fronting on the basin, provided they obtained permission for that purpose from the City Council of Baltimore, or the State Legislature; the lessee assigned his interest to S.; the reversion in the land became vested in O., who, by an action of ejectment for non-payment of rent, recovered the demised premises from S., and then applied for and obtained permission to extend into the basin, and afterwards made the extension. In an action at law, it was *held*:

That by the deed of the reversion to O., all the right of the lessor, as well in the water lot demised, as in the extension or improvement which was authorized, passed to O., and he, by virtue of said conveyance and of his recovery in ejectment, became seized in fee of all the interest in the property, held by the lessor before the lease, and that upon the forfeiture and termination of the lease, no right or interest in the lot demised or in the improvement authorized, reverted to the lessor or his heirs; and further, that if the lessee had made the improvement, the right of entry and distress of the lessor and his assigns upon the improvement, was as indisputable as upon the water lot itself. The Mayor and City Council of Baltimore vs. White, 2 Gill 444.

*Distress for Rent and Re-entry authorized under Leases to Married Women: and their Liability on Covenants in Leases or Sub-leases.*

The Act of 1867, ch. 223, provides that: In all cases where leases for a definite term or for a term of years renewable forever, have been, or may hereafter be made to a married woman, and the rent therein stipulated to be paid, shall be in arrear and unpaid for the space of ninety days, it shall be lawful for the landlord to levy said rents by distress, in the same manner as if the lessee were a *feme sole*; and in case of no sufficient distress being found on said premises, to make such re-entry, or bring such action for recovery of the demised premises, as he or she might do if the lessee were a *feme sole*, and had covenanted for the payment of said rents, and to suffer such re-entry to be made. And that :

In all deeds thereafter made to married women, of real estate or chattels real, it shall be competent for the grantee or lessee to bind herself and her assigns, by any covenant running with or relating to said real estate or chattels real, the same as if she were a *feme sole*. Revised Code, Art. 51, secs. 28 and 29.

The Act of 1882, ch. 385, provides that: In all cases when a lease or sub-lease of land for a definite term or for a term of years renewable forever, shall be thereafter made, and the term created by said lease or sub-lease shall have become, or may thereafter become, vested in a married woman, either by deed or will or operation of law, she shall be bound by, and liable on

all the covenants in said lease or sub-lease, which run with the land, the same as if she were a *feme sole*.

A deed of lease to a married woman, made subsequent to the Act of 1867, ch. 223, above quoted, contained her separate covenant to pay a certain annual rent for the demised premises and all taxes thereon. In an action against her and her husband for the breach of her covenant, it was, upon demurrer, *Held*:

1st. That the covenant to pay rent and taxes was one that runs with the land, and is embraced by the terms of the Act of 1867, ch. 223.

2d. That the remedy upon such covenant is by action at law.

3d. That the husband should not be joined as co-defendant. *Worthington vs. Cooke and husb.*, 52 Md. 297. See *Cruzen vs. M'Kaig*, 57 Md. 454.

*Personal Liability of the Lessee and his Personal Representatives under the Covenants contained in the Lease—Extent of the Assignee's Liability.*

On the covenant for the payment of rent usually contained in the renewable leases for ninety-nine years, which runs with the land, the lessee remains, with his personal representatives, liable during the whole term for the rent, notwithstanding there has been an assignment of the term by the lessee, and an acceptance of the rent by the lessor from the assignee. This liability in covenant upon the express covenants of the lease, continues after any number of assignments. *Worthing-*

ton vs. Cooke, 56 Md. 53; Myers, adm'r of Presstman vs. Silljacks, 58 Md. 319; Moale vs. Tyson, 2 H. & McH. 387; Boyle vs. Peabody Heights Co., 46 Md. 628, 629; Alexander's Brit. Stat. 352.

The reason given for this is, that the lessee's agreement being under seal, he can only be released from the express obligation assumed thereby, by an instrument of equal dignity, that is, by a release under seal. But if the action against him be in debt, or upon his implied covenants, there can be no recovery after the landlord has accepted his assignee as tenant, for the reason that in debt the duty to pay is cast upon him who receives the profits of the land, who, in the case supposed, is the assignee, and not the original tenant. 1 Poe's Pleading 311.

The liability of the original lessee, therefore, if attempted to be enforced in covenant, always continues until extinguished by a release or discharged by limitations, and this is so because of the *privity of contract* between him and the lessor, which is unaffected by any transfer of the land. 1 Poe's Pleading 311; Peter vs. Schley's lessee, 3 H. & J. 211.

An action lies on the covenant to pay rent by the assignee of the lessor against the lessee, after he has assigned the term. Harrison vs. Steele, 4 H. & McH. 218. And the devisee of the reversion may also maintain an action on such covenant against the lessee after assignment by him. Moale vs. Tyson, 2 H. & McH. 387.

By the conveyance of the reversion, the relation of landlord and tenant is created between the grantee and



the lessee of the grantor (since the statute of 4 Anne, ch. 16, sec. 4, no attornment by the tenant being necessary), and the doctrine of estoppel operates in favor of the grantee to the same extent it would in favor of the original landlord. *Fink vs. Kincaird*, 5 Md. 404.

Between the lessor and the assignee of the lessee there is only a *privity of estate*, not of contract. The obligations of the lessee bind the assignee as appurtenant to or running with the land. Hence, when the assignee in his turn assigns his interest, he ceases to be liable to the lessor upon the stipulations of the lease. When he assigns his interest, his privity is determined and is transferred to the new assignee. *Hintze vs. Thomas*, 7 Md. 346.

To make a party liable under the covenants as assignee, he must be the assignee of the whole term, for otherwise he is but a sub-lessee, and as such not liable under the covenants. *Mayhew vs. Hardesty*, 8 Md. 479.

It was once the practice of conveyancers in Baltimore, in assignments of leases, to circumvent the privilege of the assignee of relieving himself from his obligations by assigning to an irresponsible person, by inserting a covenant on the part of the assignee with the lessee who assigned, for the payment of rent by the assignee and his personal representatives during the term. This covenant making the assurance doubly sure, was considered a guaranty for the rent through any succession of assignments, and the lessee might sue on it, or he might assign the benefit of the covenant to the lessor, who might avail himself of it in the lessee's name.

A suit at law cannot be maintained against the assignee of a lessee *after* he has assigned over, for rent falling due subsequent to the assignment to him and before the assignment over; the remedy of the lessor, in such case, being in equity alone. *Hintze vs. Thomas*, 7 Md. 346.

The doctrine of estoppel as between landlord and tenant does not prevent the assignee of the lessee who has assigned over, from denying the right of the lessor to sue him at law. 7 Md. 346.

The mortgagee of a term, after forfeiture, has the whole legal estate therein, and is liable on the real covenants in the lease, whether he becomes possessed of, or occupies the premises in fact or not. *Mayhew vs. Hardesty*, 8 Md. 479; *Abrahams vs. Tappe*, 60 Md.

The Act of 1872, ch. 346 (Revised Code, Art. 64, sec. 14), provides, that where judgment is given for the lessor, under his proceeding for re-entry, for possession of the premises discharged from the lease and from the claims of the lessee, his assignee, and of all persons deriving under the lease, nothing contained in the Act shall extend to bar the right of any mortgagee of such lease or any part thereof, who shall not be in possession, so as such mortgagee shall and do within six calendar months, after such judgment obtained and execution executed, pay all costs and damages sustained by such lessor or person entitled to the remainder or reversion, and perform all the covenants and agreements which on the part and behalf of the first lessee, are and ought to be performed.

Where the assignment of a mortgage of a term of more than seven years is not recorded, it is invalid to pass the legal title, and the assignee is not bound to pay the rent and taxes which had accrued and become due under the covenants in the lease (which in this case was for ninety-nine years, renewable forever) after the making of the assignment. *Lester vs. Hardesty*, 29 Md. 50.

*Action by Lessee on Covenants.*

The lessee or his assignee is entitled to his remedy against the landlord, if he is disturbed in his enjoyment of the demised premises by the lessor, or by any one claiming under him; and he can bring an action for damages against the landlord upon the covenant for quiet enjoyment, made on the part of the lessor, or for his ouster or eviction by the landlord, or through his privity or procurement.

The lessee or his assignee, if evicted wrongfully, might at common law, by a writ of *quære ejectit infra terminum* or of *ejectione firmæ*, be restored to his possession, and recover damages for the ouster or wrong. 3 Bl. 199\*. His remedy for recovery of possession would now be under the simplified action of ejectment in use in this State. 1 Poe's Pl. 181.

If by a rightful title paramount to that of the lessor the lessee be evicted from the premises, or if the lessor himself evict him, he may plead the eviction in bar of the lessor's claim for rent, for his obligation is, in fact, commensurate with his enjoyment of the land. \* 52 Md. 658.

*Condition in a Lease for Ninety-nine years in restraint of Building—Covenant not running with the Land.*

T. and M. were seized in fee as tenants in common of a lot of ground situate at the northwest corner of Baltimore and George streets, in Cumberland—T. owning one undivided fourth and M. three undivided fourths thereof. The lot was improved by a three-story brick building, known and occupied as the St. Nicholas Hotel. A part of the lot fronting on Baltimore street was vacant or unimproved. On 24th October, 1867, T. leased to M. for the term of ninety-nine years, renewable forever, his undivided fourth interest in a portion of the vacant or unimproved part of the lot, commencing at the westerly wall of the hotel, and binding thereon. By the lease the privilege was given to the lessee, his representatives and assigns, to use so much of the westerly wall of the hotel building as bound along the first line of the property demised, as a party wall to the height of the third story floor of the hotel building only; “ provided, however, and the lease was on the condition, that the lessee and his assigns should not at any time thereafter erect, build or construct on the part of the lot demised which fronted eleven feet on Baltimore street next to the hotel building and ran back — feet in the depth, any building or tenement, any portion or part of which should be higher than the then level of the third story floor of the hotel building; and provided further, that in using such part of the westerly wall of the hotel building as a party wall, the lessee and his assigns should not weaken or materially injure or affect

the same." On 30th October, 1867, T., together with his wife, sold and conveyed to C., his heirs and assigns, in fee his undivided fourth part of the parcel of ground so demised to M., subject, however, to the said lease, and to all and singular the covenants and conditions therein. The express object of the condition in the lease, as alleged in the bill of complaint of T., was to protect the hotel fully by preserving the free light and ventilation of the west end of the third story of the main hotel building. The bill charged that M., the lessee, had directly violated and broken the condition in the lease, and was then erecting a brick building to a height several feet above the roof of the main hotel building, and that the effect of such violation of the condition of the lease was to shut out and obstruct the light and ventilation from the hall of the third story of the hotel, and greatly to injure and impair the value of the same and of the complainant's interest therein. The bill prayed an injunction and a removal of the building. The injunction was issued. M. answered, admitting the lease and the erection of the new building, but denied that any injury was produced by it. After hearing, the injunction was dissolved. On appeal, *Held*:

1st. That the condition in the lease was in its nature an independent covenant or condition made with the lessor, as owner of the hotel property for its benefit and protection; and was not in any respect intended for the benefit of the lessor, as owner of the reversion in the property leased.

2d. That it was not a covenant running with the

land demised, and did not pass to the assignee of the reversion.

3d. That the effect of the condition was to create a right or interest, in the nature of an incorporeal hereditament or easement appurtenant to the contiguous hotel property, and arising out of the parcel of land demised.

4th. That the lessor, as part owner of the hotel property, is entitled to the benefit of the condition in the lease, and it did not pass to his assignee of the reversion.

5th. That an action at law would not afford adequate pecuniary compensation, for the damage and injury done by the violation of the condition in the lease, in obstructing the light and ventilation of the third story of the hotel, and the lessor is, therefore, entitled to relief by injunction. *Thruston vs. Minke*, 32 Md. 487.

## IX.

### REDEEMABLE GROUND RENTS.

The form of a renewable lease for ninety-nine years with a clause permitting the lessee to extinguish the rent within a specified time, or at any time, is very often used instead of a mortgage for securing a loan of money, or the unpaid residue of purchase money on the sale of property.

Of this form of contract, Taney, C. J., in *Bosley vs. Bosley's Ex'x*, 14 Howard's S. C. R. 396, says that in

sales of ground, "it is far more convenient than the mortgage or bond of conveyance, both to the seller and the purchaser. For it enables the vendee to postpone the payment of a large portion of the purchase money until he finds it entirely convenient to pay it; and at the same time it is more advantageous to the vendor, as it gives him a better security for the punctual payment of the interest; and while an extended credit is given to the vendee, it is to the vendor a sale for cash. For if his ground rent is well secured, he can, at any time, sell it in the market for the balance of the purchase money left in the hands of the vendee."

In this case of *Bosley vs. Bosley's Ex's*, it was held, that a contract by a testator, after making his will, to lease land for ninety-nine years renewable forever, reserving a ground rent, with the right to the lessee to buy out the reversion by the payment at any time of a fixed sum, being the amount of the ground rent capitalized at six per cent., worked such a change of interest as revoked the devise of the property. The Chief Justice says: "In this case the interest which the testator had in this land at the time of making his will was converted into money by his contract with A. It was a sale and an agreement to convey his whole interest in the land. It is, therefore, unlike the case of a lease for years or of ninety-nine years, renewable forever, in which the lessor retains the reversion and does not bind himself to convey it on any terms to the lessee." See *Johns Hopkins University vs. Williams, Ex'r*, 52 Md. 229.

Leases for ninety-nine years containing covenants

on the part of the lessor to convey the fee simple to the lessee, when requested so to do, cannot be made to operate as a conveyance by lease and release at common law. *Spangler vs. Stanler*, 1 Md. Ch. Dec. 38.

*Quære* whether, these leases with a covenant allowing the lessee to extinguish the rent and obtain the fee simple of the property within a specified time, being virtually intended as mortgages, the principle of the equity of redemption extended to mortgages by the Courts of Equity, in its aversion to the forfeiture of the right of redemption, merely on the ground of lapse of time, might not be applied to these leases with redeemable rents, after the time for redemption has lapsed? Should time be regarded of the essence of these contracts any more than in technical mortgages? Should not evidence be admissible in such a case for the purpose of raising an equity paramount to the mere form of the instrument?

As the Court of Appeals says in *Posner vs. Bayless*, 59 Md. 60: "A redeemable ground rent is a common and ordinary form of securing a loan of money. In fact, a ground rent redeemable at a definite time has most of the essential features of, and is practically nothing more than a mortgage to secure a principal sum, the interest of which is placed in the form of an annual rent."



*A Loan of Money at Usurious Interest under the Form of a Redeemable Ground Rent.*

There being an application from S. to R., a broker, for a loan of \$30,000, and D. trustee being found ready to make it, S. conveyed to R. in fee a piece of ground for a recited consideration of \$31,500. As part of the same transaction R. then leased for a term of ninety-nine years renewable forever, the same ground to S. at an annual rent of \$1890, with power of distress and of re-entry, redeemable within six months after the lapse of ten years from the date of the lease, upon payment of \$31,500 and all arrearages of rent. R. then conveyed the ground with the rent incident thereto, to D. trustee, at a consideration of \$31,500, D. trustee, however, advancing only \$30,000 to S. Afterwards, the ground rent, in the partition of the estate of which D. was trustee, was transferred to M. without knowledge of the transaction, at a valuation of \$31,500. On a bill filed by S. to have the transaction declared a mere loan of money at usurious interest; to have the instruments of conveyance vacated; and that S. might be allowed to pay, and M. required to receive the amount of money actually borrowed of D. trustee, with legal interest thereon; and that the property embraced in the conveyances might be totally discharged therefrom; and that proceedings in distress taken by M. for the collection of arrearages of rent might be restrained by injunction, it was *Held*:

That the transaction being a loan of \$30,000 at usurious interest, S. was entitled to have the ground relieved of the operation of the instruments made to

give it effect, and upon bringing into court to be paid to M. the said sum with all interest due, at the rate of six per cent., to have those instruments cancelled, and that M. stood in the shoes of D., trustee. *Montague vs. Sewell*, 57 Md. 407.

*A Covenant for Redemption, in a lease of property by a Life Tenant, held not good.*

A., being seized of a large real estate, conveyed the same in trust for the sole and separate use of B., his wife, during her life, with full power and authority, when she might deem it expedient so to do, and for a fair and valuable consideration, to sell, assign and convey any part of said estate without the concurrence of her husband or of the trustee; provided, however, the proceeds of sale should be forthwith securely reinvested in either real or leasehold property, to be held subject to the trusts and limitations expressed in the deed of trust, and from and immediately after the death of B., in trust for the use and benefit of the two children of A. and B. then living, and of such child or children as they might thereafter have, equally share and share alike, and for the use and behoof of the heirs and representatives of said children forever; the shares or interests of the daughter or daughters of A. and B. to be held for her or their sole and separate use and benefit, free from the control of any husband they might have. The deed of trust reserved a power of revocation to the grantor, but it was never exercised. A. died, leaving

B., his widow, and two children surviving him. Subsequently B., in conjunction with the trustee, leased a lot of ground, part of the trust estate, to C. for ninety-nine years, renewable forever, and covenanted in said lease that they would at any time thereafter, during the continuance of the demise, at the request of C., and on his paying to B. the sum of \$1000 and all arrearages of rent thereunder, with a proportion *pro rata* of the accruing rent to the time of such payment, execute a deed in fee of said lot. C. subsequently assigned his interest and estate under the lease to D. The trustee died. B. also died, leaving a last will by which she appointed one of her children and the husband of the other her executors. Upon a bill filed by C. and D. against the executors and daughter of B. claiming a specific execution of the covenant to convey, as contained in the lease, *Held*:

That B., the *cestui que trust* for life, had no authority under the power conferred upon her in the deed of trust, to enter into the covenant contained in the lease so as to bind her children, the *cestuis que trust* in remainder, after the expiration of her life estate, and a specific execution of said covenant cannot be enforced. *Dean vs. Adler*, 30 Md. 147.

### *Extinguishment of a Redeemable Rent held by Trustees.*

It is not necessary for the *cestuis que trust* to be made parties to a bill filed by trustees (under a will by which they have power to sell in their discretion) as re-

versioners against the owner of leasehold property, for authority to receive from him, money which he tenders in redemption of the rent reserved, under a covenant for redemption contained in the lease. In this respect the lessee stands upon the same footing, as if he had been the purchaser of the trust property from the trustees. *Van Bokkelen vs. Tinges*, 58 Md. 53.

*A Policy of Fire Insurance defective by reason of its not mentioning a Redeemable Ground Rent on the Property.*

A fire insurance company, by its agent, S., underwrote for B. a policy insuring against fire certain buildings and property in Cumberland, to the amount of \$2500. The property being destroyed by fire, the insurance company refused to pay the insurance, alleging non-compliance by the assured with the following condition of the policy :

“If the interest of the assured in the property be any other than the entire, unconditional and sole ownership of the property for the use and benefit of the assured, or if the building insured stands on leased ground, it must be so represented to the company and so expressed in the written part of the policy, otherwise the policy shall be void.”

The following condition was also in the policy :

“If the interest of the assured in the property, whether as owner, trustee, consignee, factor, agent, mortgagee, lessee or otherwise, be not truly stated in

the policy, then and in every such case the policy shall be void."

The property was insured as K.'s property, but before the time the policy was written, B., having borrowed \$6000 from H., had, instead of a mortgage, created a ground rent in his favor of \$420 per annum, redeemable on payment of the sum advanced, being in effect a lease for ninety-nine years. This fact was not written on the policy. B. sued at law, and the court decided that he could not maintain his action on the policy, as H.'s interest had not been described in it. *Farmville Ins. and Bank Co. vs. Butler*, use of Hoffman, 55 Md. 234.

## X.

### PROHIBITION IN FUTURE OF IRREDEEMABLE GROUND RENTS.

Irredeemable ground rents are not regarded with favor by the community at large. As was remarked by Judge Phelps in his address at the Sesqui-Centennial celebration in Baltimore, "The system of ground rents irredeemable and leases perpetually renewable has done much in times gone by to encourage and facilitate the growth of improvement in Baltimore; but it has of late years been abused for speculative purposes by the reckless imposition of exorbitant rents." The ground has been too much stimulated in the interest of the owners, and for the benefit of builders.

The objections to ground rents on account of the burden of a perpetual debt, on which the debtor is permitted to pay only the interest, and of an obligation to pay his own taxes and those of the owner of the ground rent, which the system of irredeemable ground rents has imposed on the owner of the leasehold, are known to all who have had dealings in leasehold property. It is not necessary to enlarge on the subject here.

The complications that are now appearing, after the first century of these leases, and the effects on the landed interests of Maryland, is a matter which commands the consideration of the Legislature. If the power to forbid the creation of any more irredeemable rents is in the Legislature, it should be exercised; for that it is expedient to do so, seems to be generally admitted.

If such an act can be constitutionally passed by the Legislature, it could apply only to the future. It is only in times of revolution that, by a stroke of the pen, vested rights founded upon contract have been annihilated. It was thus that, in 1780, the General Assembly of Maryland swept away, without compensation, the quit rents and alienation fines of the deposed proprietary; and it was on the outbreak of revolution that the Constituent Assembly of France, in 1789, attacked the property of the nobility, on account, as M. Thiers is careful to explain, of its "being more or less burdensome to society." "It abolished personal services, and several of these services having been changed into quit rents, it

abolished quit rents. Among the tributes imposed upon land, it abolished those that were evidently the relics of servitude, as the fines imposed upon transfers; and it declared *redeemable* all the *perpetual* rents that were the *price* for which the nobility had formerly ceded part of the lands to the cultivators." So in many parts of Germany, after the revolution of 1848, the "allodification" of land was made compulsory—the landlords being required to accept from their tenants a commutation for their rents.

The attempts to collect the rents reserved on the manor lands of the Livingston and Van Rensselaer estates, in New York, were met with organized resistance in 1846. It was, therefore, enacted in that State in 1846 and 1848, that no lease or grant of agricultural land for a longer period than twelve years, in which there should be reserved any rent or service, should be valid. Cadwalader on Ground Rents in Pennsylvania, 108, *note*.

In 1850, the creation of any more of the perpetual rents, known as ground rents, in Pennsylvania, was prohibited; but in 1869, a law passed with the purpose of extinguishing existing rents, was declared unconstitutional by the Supreme Court of that State, in *Palaviet's Appeal*, 17 P. F. Smith, 479; Cadwalader on G. R. 297, 300.

Public opinion is evidently in favor of the enactment by the Legislature of Maryland, of a law *the same in intent* with that passed by the Legislature of Pennsylvania, in 1850. It would not do, however, to follow the

form of that act, as the two systems of ground rents in Pennsylvania and Maryland, are based on entirely different principles.

In conclusion, we present the preambles and resolution in favor of a law prohibiting the creation of Irredeemable Ground Rents in the future, offered on the 5th of February, 1883, by Mr. Henry N. Bankard, member of the City Council of Baltimore for the fourteenth ward. Mr. Bankard has been very earnest and active, for many years past, in his opposition to irredeemable rents, because of their being, in his opinion and that of many other prominent dealers in real estate, highly detrimental to the material growth and prosperity of this city and State.

The preambles and resolution were unanimously adopted. They are as follows:

Whereas, the State of Maryland is the only place that tolerates perpetual debts in the shape of irredeemable ground rents; and

Whereas, it is a notorious fact that every State in this country which has heretofore allowed the system to prevail, has been forced to prohibit by law the further creation of perpetual ground rents; and

Whereas, it is against public policy to incumber and hinder the transmission and assignment of property, and to prevent the tearing down of old and dilapidated buildings and the erection of new and more costly and substantial ones in their stead; and

Whereas, the whole tendency of the system is to discourage, instead of encouraging persons to become



identified with the city's best interests, by owning their houses and homes ; and

Whereas, it is grossly unjust and inequitable as to the mode of taxation, because, no matter how much the improvements or leasehold interests decline in value, or the value of the ground rent or fee simple interest becomes enhanced, the taxation often remains the same as if there were no appreciation in one interest or depreciation in the other ; and

Whereas, the result of the system not only compels the house-owner to pay a tax on property which he never owned, but which also makes him pay a tax on that which he has actually lost, and the owner of the ground rent has gained ; and

Whereas, a perpetual debt, in the shape of an irredeemable ground rent, is an evasion of the usury law, inconsistent with the Bill of Rights of the State and wrong in principle ; and

Whereas, it affords a dishonest transformation of real estate into personal property, to the detriment and injury of dower interests ; and

Whereas, not only one house, but in many instances whole blocks of houses, and frequently acres of ground, are tied up with one perpetual rent, so that no house can be sold in fee, or a clear title given to any one portion of such ground ; and

Whereas, the whole system of ground rents in our city has changed, and the tendency of the system is to encourage the erection of thousands of *shells* for houses, by men of no experience as builders, and are so constructed as to propagate contagious diseases ; and

Whereas, nine-tenths of all the houses put up in the city are subject to this relic of feudalism, resulting in the injury of all other property ; and

Whereas, the system as now in operation, tends to withdraw capital from manufacturing and other business enterprises ; as it is invested in ground rents, and the interest on such investments reinvested in the same manner in many instances, so as to retire from active business all such capital ; and

Whereas, our city is not keeping pace generally with other cities with less advantages as to climate, position and business facilities, in consequence of this system of irredeemable ground rents, operating as it does in unjust and inequitable taxation ; and

Whereas, we believe that the creation of any further irredeemable ground rents should be prohibited by an Act of the Legislature ; therefore, be it

Resolved by the Mayor and City Council of Baltimore, that the law officers of the city be and they are hereby authorized and directed to prepare a bill, similar to the one passed by the Legislature of the State of Pennsylvania on the 22d of April, 1850, which will forever prohibit the further creation of any more irredeemable ground rents in the State of Maryland, and to present the same to the next Legislature, with a recommendation that it be passed.

#### ADDENDUM.

Since this book was printed, my attention has been drawn to an exception to the usual form of ground rents in Maryland, in the case of the annual rents reserved in deeds from Jonathan Hager, the original proprietor, of lots in fee simple in Elizabeth-town, now Hagerstown, laid out in 1762. These deeds, I am informed, are in the usual form of deeds in fee simple without clauses for distress and re-entry, and without express covenants for payment of rent. The deeds conveying the lots, each 82 feet front by 240 feet deep, reserve an annual rent on each of them of seven shillings and six pence. Some of these rents are still paid to descendants of Mr. Hager. See 2 Scharf's Hist. West. Md. 1059, 1060.

I append an opinion (handed to me by a great granddaughter of Jonathan Hager) of Luther Martin on these rents:

“ May 26th, 1803.

“I have seen and considered the deeds executed by Jonathan Hager for lots in Elizabeth-town, conveying the same in fee, with a reservation of an annual rent, payable to himself, his heirs and successors. There can be no doubt but that he had a right to reserve the rents upon such conveyances; and that whoever took and holds under such conveyances, is obliged to pay the

rent reserved unto the representatives or assignees of Jonathan Hager. When the sum does not exceed ten pounds, it may be recovered as any other debt by warrant. If the sum due exceeds ten pounds in any case, and the person who owes is solvent, an action of debt or covenant may be supported against him to recover the debt. Or, in either case, whether the rent due and in arrear is under or above ten pounds, the representatives or assignees of Jonathan Hager may bring an ejectment for the lot and improvements on which the rent is due, and recover and hold the lot with the improvements, unless the tenant will pay up all arrearages on the lot; for the deeds only convey a *conditional fee simple*, and become *void at law* on failure of paying the annual rent."

The leases occasionally made in Maryland, for nine thousand nine hundred and ninety-nine years, or for very long terms of years, "with the benefit of renewal forever," reserving an annual rent of a substantial sum or of one cent if demanded—some of them with a covenant on the part of the lessor, his heirs and assigns, to execute a deed in fee simple of the ground to the lessee, his representatives or assigns, on their request—are identical in intent with those for ninety-nine years renewable forever, and subject to the same rules of construction. See examples in Land Records of Baltimore, W. G. No. 160, folio 759; W. G. No. 166, folio 644.

## APPENDIX.



## OLD MARYLAND MANORS.

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A striking contrast between the North and the South is presented by the small landholdings of the former and the great estates of the latter. Tracts of thousands of acres were not at all uncommon in colonial Maryland, and sometimes land-grants included even tens of thousands. These great estates had a strong shaping influence on the life of early Maryland. Separating their owners by wide intervals, they prevented that association of interests and feelings that was strong in the towns of the Northern colonies. The man who lived in the centre of a tract of ten thousand acres must necessarily have been thrown largely upon his own resources for amusement and for culture. The co-operation which makes schools and libraries of easy attainment in a thickly settled community was absent among such people. Consequently education could be obtained only at great cost and inconvenience. The planter who was determined to have his children well taught had to send them abroad, as was done in the case of Charles Carroll of Carrollton.

There were some towns founded in Maryland, it is true, in the earliest days. The vanished city of St. Mary's, the lost Joppa, and others that have disappeared as completely as the "cities of the plain," furnished a stimulus to civilization in some parts of the colony. But in spite of these instances, it is true that most of the life of Maryland in the latter half of the seventeenth and the whole of the eighteenth century, was country life. And it was a country life that presented many analogies to the country life of Englishmen during the same period.

The first generation of Maryland planters led that sort of hand-to-mouth, happy-go-lucky existence that marked the beginning of all the colonies. Until means became adapted to ends, but little comfort and still less culture were to be found. Many of the earliest settlers of high consideration made their cross-mark on titles, deeds and conveyances. Their ignorance, however, was the knowledge of the class from which the best born of them sprang—the English country gentry of the seventeenth century.

The share of Maryland planters in the conveniences of life does not appear to have been large at first, though even then they made an attempt at good living. In the inventory accompanying the will of Governor Leonard Calvert, the item of a silver sack-cup follows that of two pairs of socks. Sack probably occupied far more personal attention than did wearing apparel. Indeed, one of our historians ventures the statement that this potent liquor is oftener mentioned in the records of Maryland than in the pages of Shakespeare. Beds in the early days were lamentably lacking. Travellers either deprived the host of his, or slept upon deer skins or fodder piled upon the floor. All the appointments of a household were necessarily meagre.

But after this early period had passed and Marylanders had learned for good and all of what their soil and their climate were capable, a settled order of things began, which continued into the present century. The life of the Maryland planter of this second period was such as left few traces in the written accounts that have come down to us. In the few letters and journals of the colonial epoch—few, because so rarely the colonists had the knowledge, and more rarely still the taste to write either letters or journals—in these few are to be found historical suggestions. Of the famous estates of the colonial era, a small number are still in the hands of the descendants of colonial families. An idea of the former condition of things can be obtained by visiting these localities. There are still found the ancient houses, the chapels, the outbuildings, that have remained from colonial times. There, more clearly than elsewhere, we may see the vestiges of the old aristocratic spirit which has almost disappeared under the democratic attrition of more than a century. These traces will not last much longer, and if any record of this old system is to be kept, it should be made at once.

The Calverts desired to found in Maryland a new landed aristocracy. Though the "Bill for Baronies" never passed the Assembly, the Proprietary was able to establish manors, and to give to the manorial lords rights of jurisdiction over their tenants. The lord of the manor thus became a person of prime importance. While his wealth as a large landholder gave him one element of consideration, his judicial dignity gave him another.

The reason the settlers consented to the introduction of this system is not hard to find. Our Maryland ancestors, following the example of certain great proprietors, proposed to live in



scattered, rural ways, on large estates. The manorial system, which had been used for a like purpose in the old country, lay ready to their hands, and they adopted it. Similarly, the men of New England, proposing to live in close communities, adopted the township system. Once taken up, the manorial system became general, so that English manors, English halls, English lords of the manor were scattered all over our State.

In accordance with his charter right,\* the Proprietary, in 1636, issued instructions that every two thousand acres given to any adventurer should be erected into a manor, with "a Court Barron and a Court Leet, to be from time to time held within every such mannor respectively." † These instructions were repeated many times, and the records are filled with such grants. Capt. George Evelin, Lord of the Manor of Evelinton, in St. Mary's county; Marmaduke Tilden, Lord of Great Oak Manor, and Major James Ringgold, Lord of the Manor on Eastern Neck, both in Kent; Giles Brent, Lord of Kent Fort, on Kent Island; George Talbot, of Susquehanna Manor, in Cecil county; these are a few names picked at random. In the Library of the Maryland Historical Society is to be found a conveyance dated 1734 for a parcel of land to be held "as of the Manor of Nanticoke." In the same collection are preserved the rent-roll of Queen Anne's Manor, and a statement of the sale, in 1767, of twenty-seven manors, embracing one hundred thousand acres. In 1776, there were still unsold seventy thousand acres of proprietary manors lying in nine counties.‡ In the Maryland Reports§ is to be found a notable lawsuit over Anne Arundel Manor. The Proprietary, Frederick, Lord Baltimore, sought by means of a common recovery to break the entail upon the manor, and thus prevent its passing into the hands of a natural son of the former Proprietary.

At the present day we find many estates called manors. Those that have attracted most notice are My Lady's Manor and Bohemia Manor. At the beautiful and historic seat of the Hon. John Lee Carroll, Doughoregan Manor, the name, the mansion, the chapel, the grounds, all still show surviving evidences of the original state of affairs. But it is with the social side of this system that we are here concerned. Its civic aspect will be treated in a subsequent part of this paper. It is, however, rather the patri-

\* Charter of Maryland, Art. 19.

† Kilty, 31. *Conditions of Plantation*, 1636.

‡ 2 Scharf, 104.

§ 2 Harris & McHenry, 279.

archal than the feudal type of society that is presented at the period we have materials for describing. It is not easy to picture the combined elegance and simplicity of those old homesteads—the appearance they presented of aristocratic state mingled with republican good-fellowship. The entrance to the place was, perhaps, through a wood of old oaks and chestnuts, that had passed their sapling growth a century before George Calvert, first Baron of Baltimore, appeared as a stripling in the English Court. Emerging from the wood, the road was lined with a double colonnade of locusts or beeches with footpaths between. Nearing the mansion, pines and firs replaced the deciduous trees, and the evergreen branches formed a symbol of the ever-fresh hospitality awaiting the approaching guest.

Before the door stood the old elms, planted by the founder of the family, and the lawn was terraced in the English style. The turf—a peculiar pride of the master of the house—was so thick and close that it would be hard to find a finger's breadth of earth without its blade of grass. Conifers stood at intervals over the half dozen acres forming the lawn, and at either end of a terrace a catalpa with a trunk of Californian proportions shaded a rustic seat.

The house itself was in most cases a long, low structure of brick. The finest residences were remarkable for their large size and striking appearance.\* The rooms of the old houses were grouped about a large hall-way in which some of the family usually sat. The walls everywhere were wainscotted to the ceiling. Sometimes the woodwork was finely carved and of rare material. Upon the walls hung the portraits of the ancestors of the family, often as far back as six or seven generations. A sideboard in the dining-room displayed a portion of the plate, bearing the family crest. Flanking the plate stood a great array of glasses and decanters. For in the early days the proper discharge of the sacred duty of hospitality involved various strong potations. Even now the visitor to the Maryland country house is almost always invited to take something to drink on entering or leaving the dwelling.

Various offices stood around the mansion. Notable among them was the stone smoke-house. The quarters of mast-fed hogs hung from the roof, and the fires in the pit below were tended by superannuated negroes, their faces greasy with lard and begrimed with soot beyond their natural blackness.

\* Eddis's Letters.

In some places the family chapel stood close by the house. On one side of the main aisle sat the slaves, on the other the free white tenants; and no considerations of comfort could induce the free-men to cross the interval that served as a boundary between them and the servile race. Beneath the brick floor of the chapel and marked by a marble slab, were the graves of dead members of the family of the lord of the manor. Any one attaining special distinction was buried by the side of the chancel, and within the chancel rails, let into the wall, was a tablet to his memory. If the family belonged to the ancient church, frescoes and oil paintings, occasionally copies of considerable beauty, adorned the place.

The mode of burial curiously illustrated the prevalent feeling of class distinction, and at the same time preserved an ancient custom of the mother country. While the lord's family lay buried beneath the floor in the chapel, the tenants' graves were at a distance, hidden among the trees. At some of these graves stood a neat slab of stone with a pious inscription. Still farther removed, with only a board as a memorial of each, were the graves of the slaves. Not even death could unite what God had put asunder.

At a considerable distance from the great house was the dwelling of the overseer. Around him in numbers sufficient to people a small town, lived the negroes whose labor produced the wheat and tobacco upon which the fabric of society rested. Out of the number of these dependants a few of the likeliest went to the mansion as domestic servants.

Scattered at intervals over the estate, wherever their farms lay, were the houses of the free white tenants. The tenant farms were frequently several hundred acres in extent, and were held on leases of twenty-one years. The rent was low and was usually paid in kind, not in money. The system had some of the evils incident to English land tenure of the present day, and has now given way to short leases, or has disappeared entirely by the breaking up of the estates on which it was practised.

In various ways on these estates the traditional sports of the mother country were kept up. One of the patriarchs of colonial Maryland, when importuned by his relatives to break the entail upon his estate, replied: "If one of you inherit the whole, I shall be responsible for the production of one fox-hunter. If I divide it, I shall make as many fox-hunters as I make heirs." Fox-hunting was a pursuit in which Marylanders delighted. In no characteristic is the Englishry of the settlers (to use Mr. Freeman's term)

more clearly shown than in this. On horses that seemed almost tireless, and with dogs like the horses, they sometimes chased Reynard across the eastern peninsula, from the Chesapeake to the Atlantic. The return journey and the stops at hospitable mansions on the way took more time than the pursuit of the fox, and the whole expedition sometimes lasted a week.

Aside from the social aspect of these old estates, they are also worthy of notice from a civic point of view. The history of Maryland owes its interest not so much to striking events as to the continuity of old English institutions and ancient habits of local self-government. When the early colonists came to Maryland they invented no administrative or judicial methods. The old institutions of England were transplanted to Maryland and acclimatized. In the new soil they were modified and destroyed, or they were modified and perpetuated. But in either case there is perfect continuity between the institutions of colonial Maryland and those of the older country. For our new institutions, like new species, were not created; they grew from the old. Lord Baltimore modelled his colony after the Palatinate of Durham, and the details of local administration were what they had been at home. Old methods were adapted to new conditions.

The manor was the land on which the lord and his tenants lived, and bound up with the land were also the rights of government which the lord possessed over the tenants, and they over one another. For the ownership of the manorial estate carried with it the right to hold two courts, in which disputes could be decided and tenant titles established and recorded; and in which, also, residents on the estate exercised a limited legislative power. These manorial jurisdictions have descended from a time previous to the accession of Edward the Confessor, and their reproduction and continuance in Maryland form a striking instance of the permanence of ancient English customs.

A tradition has come down in Maryland that these courts were held occasionally by members of the Proprietary family owning manors.\* In a court-baron, held on St. Gabriel's Manor, in 1656, the steward gave a tenant seizin by the rod, each party, according to ancient custom, retaining as evidence of the transfer a part of a twig broken in the ceremony.† In the library of the Maryland

\* Kilty, 93.

† 2 Bozman, 581, note. The same old English custom obtained in early New England.

Historical Society is preserved the record of a court-baron and a court-leet of St. Clement's Manor, in St. Mary's county, held at intervals between 1659 and 1672. This paper is printed herewith. We can hardly believe that this record is the only one of its kind that was kept in the Province. For a single one that has been preserved there must have been many lost. When we consider that so many documents belonging to the government of the colony, and for whose preservation great precautions were once taken, have nevertheless been destroyed, it will appear but natural that papers left entirely in private hands, and of but little value or interest to their possessor, should have entirely disappeared. Moreover, as will presently be shown in detail, the profits of the manorial courts were not inconsiderable. Consequently, they would not soon be relinquished. Nor is it likely, where every owner of two thousand acres could obtain these rights of jurisdiction, that only two persons in the whole Province would exercise them. It seems probable that in the early period of the existence of the colony manorial courts were not uncommon.

The popular court of the manor was the court-leet or court of the people. When the grant of the leet included the view of frank-pledge, as in the Maryland manors, that ceremony took place at the leet, though in the records no mention of the view is made. At the opening of the leet, the steward, who was the judge, having taken his place, the bailiff made proclamation with three "Oyez," and commanded all to draw near and answer to their names upon "pain and perill." Then followed the empanelling of a jury from the assembled residents on the manor, all of whom between the ages of twelve years and sixty were required to be present. The duties of a leet jury seemed to have been those of both grand and petty juries. All felonies and lesser offenses were enquirable. The statute, 18 Edw. II, names the following persons as proper to be investigated at a leet:

"Such as have double measure and buy by the great and sell by the less. . . . Such as haunt taverns any no man knoweth whereon they do live. . . . Such as sleep by day and watch by night, and fare well and have nothing,—" a set that need watching. The leet had also a general supervision of trade, fixed the price of bread and ale,\* and set its hands on butchers that sold "corrupt victual." The game laws also were enforced by the leet. At the leet held at St. Clement's, in St. Mary's county, Robert

\* See Record of St. Clement's Manor for instances.

Cooper was fined for fowling without license on St. Clement's Island. The notion that hunting was for the rich alone showed itself in another way. Of the chase or park of the English manors, some traces may be found in Maryland. A writer in "A Description of the Province of New Albion," which adjoined Maryland on the east, speaks of "storing his Parks with Elks and fallow Deer," probably following a Maryland example. On the Bohemia Manor, the remains of the walls of a deer park were pointed out as late as 1859.\* That any necessity existed for a park is not to be believed. Venison was so common a food that Hammond, in *Leah and Rachel*, says "that venison is accounted a tiresome meat." An aping of aristocratic manners may, perhaps, have induced some of the settlers to enclose a wood for a park, but nothing else could have done so.

Another important function of the court-leet was the levying of a deodand or fine upon the cause of any accident to life or limb. A reckless driver running over a child or a careless woodman felling a tree and killing a passer-by, was mulcted by the jury of the leet. Before the period of Maryland manors, the cart or the tree causing the injury became the property of the lord, the idea being that he would expend its value in masses for the soul of the deceased. In this is probably to be found the origin of the name given to the payment, deodand.† In actual fact, however, the soul of the departed was not of sufficient importance in the eyes of most lords to compel the loss of a piece of property so easily acquired as the forfeited article.

The leet could enact by-laws regulating the intercourse of residents with each other, and the regulations had all the force of a town ordinance. In the leet also constables, ale-tasters, affeerors and bailiffs were elected; and interference with the exercise of their duties, as breaking into the pound, taking away impounded cattle, or resisting distraint for rent, was punishable by the leet.‡

\* 1 Scharf, 430.

† See interesting remarks on this topic in Lectures on the Common Law by Oliver Wendell Holmes, Jr.

‡ Manorial courts are still held in some parts of Great Britain. In *Notes and Queries*, October 21, 1882, it is stated that on October 3, 1882, a court-leet for the manors of Williton Regis, Williton Hadley and West Fulford was held. Appointments of inspectors of weights and measures, of bailiff, and of hayward were made. The leet for the town of Watchit was held also, and appointed a port-reeve, ale-tasters, a crier, a stock driver and an inspector. Leets were also held the same month on the estates of the Duke of Buccleugh. (N. & Q., November 4, 1882.)

The fines imposed went to the lord and were often profitable. Besides fines, other punishments were used. In 1670 the jury of St. Clement's leet ordered the erection of "a pair of Stocks, pillory and Ducking Stoole." \*

The presence of irresponsible strangers seems to have been peculiarly distasteful to our ancestors. By a law of Edward the Confessor, a man was forbidden to entertain a stranger above two nights unless he would hold his guest to right. So the constable on the manor anciently took security of all heads of families for the keeping of the peace by strangers in their houses. Curiously enough, the leet at St. Clement's presented John Mansell for "entertayning Benjamin Hamon & Cybil, his wife, Inmates," and ordered him "to remove his inmates or give security"; a proceeding that would have been in perfect keeping a thousand years ago.

The Maryland county justices were required to appoint constables in every hundred, who swore on taking office to "levy hue and cry and cause" refractory criminals to be taken.† The hue and cry carries us back to remote Anglo-Saxon times, when all the population went to hunt the thief. The duties of the manorial constable were doubtless the same in the manor as those of the constables of the hundred in their districts.

The affeerors, mentioned above, were sworn officers chosen from the residents. Their duty was to revise the fines imposed by the leet jury, and to temper justice with mercy. They are mentioned several times in the records of St. Clement's, in one case reducing to two hundred pounds an amercement of two thousand pounds of tobacco imposed on a certain Gardiner, who had taken wild hogs belonging to the lord.‡

The Maryland Indians were very early reduced to a dependent condition, and it became the duty of the leet to include them in its police jurisdiction.§ There is an account in the St. Clement record of the fining of two Indian boys for some thievish pranks. Moreover, "the King of Chaptico" himself is presented for stealing a sow and her pigs and having "raised a stock of them." This was apparently too weighty a matter for the simple jury of the tenants, so it was referred to "ye hon<sup>ble</sup>, ye Gov<sup>r</sup>." The matter of losing hogs seems to have been a great grievance for the tenants, and the jury accordingly reported that they "conceive that Indians ought not to keepe hoggs, for under pretence of them they may destroy

\* See Record.

† See Record.

‡ Parks, Laws of Maryland 1708, p. 99.

§ See Record.

all ye hoggs belonging to the man<sup>r</sup>, and therefore they ought to be warned now to destroy them, else to be fyned att the next court." The conquered Britons were treated in a spirit almost as liberal.

The elasticity of an old institution like the leet in being thus adapted to the government of savages is worthy of note. It is a striking illustration, also, of the principle that impels men to adapt old forms to new conditions, and it deserves to be placed by the side of the institution of tithing men among the Indians of Plymouth.\* Doubtless other methods of police and government for the Indians were adopted in various places by the colonists, and curious survivals of old forms like the above might be noted by the investigator.

In the court-baron of the freeholders the freehold tenants acted as both jury and judges. A freeholder could be tried only before his peers. So that if the freeholders fell below two in number the court could no longer be held. Before this court were brought points in dispute between the lord and his tenants as to rents, forfeitures, escheats, trespass and the like. Besides these matters, actions of debt between tenants and transfers of land took place in the court-baron. Here, also, the tenant did fealty for his land, swearing,† "Hear you, my lord, that I, A. B., shall be to you both true and faithful, and shall owe my Fidelity to you for the Land I hold of you, and lawfully shall do and perform such Customs and Services as my Duty is to you, at the terms assigned, so help me God and all his saints."‡

\* "Studies," IV. Saxon Tithingmen in America, p. 10.

† Gurdon, 615. See Record for instances of swearing fealty.

‡ The origin of manorial courts is very obscure and goes back to an early period. Among the Anglo-Saxons, as early, perhaps, as the eighth century, conquest, purchase, grant and commendation had given rise to great estates. By this means all the arable land in some neighborhoods became the property of a wealthy lord. Consequently, the hitherto independent village community of owners of arable land became a dependent community of tenants. At the same time hunting, fishing, pasture, wood cutting, all the rights to the use of common wild land, rights that had formerly run with the ownership of a share of arable land, became rights of the lord, to be exercised and enjoyed by the tenant only by the sufferance of the lord. Thus, it appears, originated the title of the lord to the waste and to the game inhabiting it.

Contemporaneously with these agrarian changes went on as great a judicial change. Among the Anglo-Saxons jurisdiction belonged to the state, not to the king. But jurisdiction and the profits of jurisdiction were separate. While justice was a public trust, the profits of justice were



Some of the feudal incidents of the manorial tenure may be found mentioned in the records of the Maryland Land Office.

merely a source of royal revenue. So it came about, as early as the ninth century, that the fines of the hundred courts, fines for which every offence might be commuted, were often granted by the king to any neighboring magnate. This grant of profits was very different from a grant of jurisdiction. The date at which private jurisdiction originated is unknown. The earliest grants of it date from the reign of Edward the Confessor, but private courts existed before his time. Though he and his Norman advisors were the first to regard jurisdiction as royal property, to be granted away, a revolution had already taken place in the customs of the people, who had abandoned the ancient judicial system, for the loose administration of the popular courts no longer satisfied the needs of an advancing civilization.

So clumsy and slow was the machinery of the hundred court that suits were almost always compromised. A favorite method of settlement was arbitration. The most natural arbitrator between tenants was the lord, and only a contract between the parties was needed to give him the powers of the hundred court. While the lord's decision was binding in law only as the result of a contract, yet his private authority among his tenants was great enough to enforce the settlement. Here, then, seems to be an origin, and a Saxon origin, for the jurisdiction of a manorial lord.

So much for the origin of private jurisdiction in general. An explanation of the specific origin of the three courts, the leet, the common law court baron and the customary court baron, brings us to a controversy. Professor Stubbs, on the authority of Odericus, derives the courts of the manor from the tun-gemot. (*Hist. I*, 399.) Henry Adams denies the existence of the tun-gemot (*Essays in A. S. Law*, 22), and derives both the court baron and the court leet from the hundred court. As to the customary court he is silent. Professor W. F. Allen has still a third view, the court baron, according to him, being of feudal origin, and not being found earlier than the end of the eleventh century. He makes the non-existent tun-gemot of Professor Adams the germ of the customary court. All these views are so ably supported that it would be highly desirable to reconcile them, though it is probably impossible.

Adams appears to have proved that all manorial jurisdiction was originally obtained by the lords assuming the powers of the hundred court. This may have been done by prescription, the tenants agreeing, or perhaps by actual royal grant of jurisdiction following on grants of profits.

But Allen's conclusions have a direct bearing here. He maintains, with great force, that the freeholders, the suitors and judges of the court baron, took their rise in the feudal period. No freeholders, in our sense, are to be found, he says, earlier than the end of the twelfth century. He thinks that in the interval between Domesday and this period, certain of the members of the class of villeins were advanced to the dignity of freeholders, while all the other original holders lost their earlier rights and fell into copyhold tenure. The court baron was established on a French model for the use of

Here is an example quoted in the *Land-holder's Assistant* :\*

"Whereas certain lands and tenements holding of the manors hereunder named have ceased for these three years last past to pay the rent due. . . . These are therefore to summon the said several tenants to pay the said rent and arrears and charges of this process unto the lord of the manor . . . . or else to be at the court . . . . to show cause why the said land should not escheat to Lord of the Manor. . . . In the Manor of St. Michaels; one tenement of 100 acres . . . yearly rent 2 barrels of corn and 2 capons—arrear, 3 years. . . ." In the Manors of St. Gabriel and Trinity like claims were made. These are apparently the only instances on record of claims to escheats by manor lords. "At a court held at St. Mairies, 7th December, 1648, came Mrs. Margaret Brent and required the opinion of the court concerning . . . the tenements appertaining to the rebels within his Manors, whether or no their forfeitures belonged to the Lord of the Manors. The resolution of the court was that the said forfeitures did of right belong to the Lord of the Manors by virtue of his Lordship's Conditions of Plantation. . . ."† While this interests us as the record of a feudal forfeiture in Maryland, it has an added attraction, due to the fact that this is probably the first mention of a female attorney. Another fact showing how the manorial tenure entered into the life of the people, is a decision of the Maryland Court of Appeals, made as late as 1835. In this case‡ it was held that a tenant on a manor was entitled on giving up his lease to the benefit of those manorial customs that were commonly recognized as good by the tenants, and that had been observed by the tenants during an indefinite time.

The manorial grants were originally used to promote emigration to the colony. To this purpose was soon added another, namely, that of military defence. It seems to have been the desire of the Proprietor to introduce a body of cultivators that could at any time be turned into militia. Accordingly, in 1641, he issued the follow-

these promoted tenants. The Saxon manorial court, which Allen derives from the court of the township, and Adams from the hundred court, became the customary court of the copyholders. As they had fallen in status, so did it, and all important business of the estate was transacted in the court baron or the court leet. (See Allen's *Origin of Freeholders* in Proceedings of the Wisconsin Academy.)

\* Kilty, 103.

† Quoted by Kilty, p. 104.

‡ Dorsey *vs.* Eagle, 7 Gill and Johnson 321.

ing "Conditions of Plantation": "Whatsoever person . . . . shall be at the charge to transport into the Province . . . . any number of able men . . . . provided and furnished with arms and ammunition according to a particular hereunder exprest . . . . shall be granted unto every such adventurer for every twenty persons he shall so transport . . . . two thousand acres . . . . which said land shall be erected into a Mannor . . . . with all such Royalties and Privileges as are usually belonging to Mannors in England. . . .

"A particular of such arms and ammunition . . . . for every man which shall be transported thither.

"*Imprimis*—One Musket or Bastard-Musket with a snaphance Lock.

"*Item*—Ten pound of Powder.

"*Item*—Fourty pound of lead—Bulletts, Pistoll and Goose Shot, each sort some.

"*Item*—One Sword and Belt.

"*Item*—One Bandelier and Flask."

Such legislation bears an analogy to the Assize of Arms, under Henry I, and to parts of the Statute of Winchester, under Edward I. The idea of military defence by the mass of the people is common to these instances of English legislation of the middle ages, and to this regulation of the Maryland Proprietary of the seventeenth century.

In addition to these grants to private persons, manors were given to the Church. Newtown Manor, formerly an estate of the Proprietary, is to this day in the hands of the Jesuits. In Charles and St. Mary's counties, large estates, still bearing the title of manors, are at present owned by that society. All efforts have been unavailing to obtain access to any documents relating to these lands. If search were permitted in the archives of the order, much interesting material might be discovered.

It should not be thought that the aristocratic character of the manor was injurious to the growth of liberal ideas. The manor was a self-governing community. The manor officers were elected by the tenants, and juries were drawn from among the same body. By-laws for their own government were adopted by most voices. So there was ample scope for individuality to show itself. The extinction of the manorial system was probably not due to any democratic feeling of opposition to it as a relic of feudalism, but to another cause. The early introduction of

slavery must soon have made it more profitable for the lord to cultivate all his estate than to rent it to tenants, unless the estate were of immense size. The very large estates, however, were quickly subdivided when population increased. Consequently, the relations which made a manor possible soon ceased to exist. At the same time the necessity for a system of private jurisdiction passed away. The manorial courts were adapted to a state of society in which law-abiding men lived far apart, and surrounded by unquiet neighbors; a society in which bloodshed was frequent and property insecure. In such circumstances it was needful to have in each community a person uniting in himself the influence of wealth and the majesty of law. When higher civilization made violence rare, and when better means of communication made it easy to reach the public courts, private authority was no longer needed. The feudal society of the manor reverted to the patriarchal society of the plantation. Serfs or slaves now replaced the free tenants of former times. The rights of these *villeins en gros* were entirely at the will of the owner of the estate. Controversies between them never reached the dignity of legal adjudication. Between them and their owners controversy was in the nature of things impossible. Here there was no scope for manorial courts. Controversies between master and master went, as before, to a public tribunal. The court baron and the court leet, having served their turn, were cast aside. If they played no great part in the history of the State, they are interesting as an extinct species, an institutional fossil, connecting the life of the present with the life of the past.

# RECORDS OF THE COURT LEET AND COURT BARON OF ST. CLEMENT'S MANOR, 1659-72.

ST. CLEMENTS } ss A Court Leet & Court Baron of Thomas Gerard  
MANOUR } Esq<sup>r</sup> there held on Thursday the xxvii<sup>th</sup> of October  
1659 by Jn<sup>o</sup> Ryves gent Steward there.

CONSTABLE: Richard ffoster Sworne.

RESIANTS: Arthur Delahay: Robt<sup>e</sup>: Cooper: Seth Tinsley: Willm: at  
Robt<sup>e</sup> Coles: Jn<sup>o</sup> Gee Jn<sup>o</sup> Green Benjamin Hamon Jn<sup>o</sup> Mattant.

FFREEHOLD<sup>rs</sup> Robt<sup>e</sup> Sly, gent: Willm: Barton gent: Robt<sup>e</sup> Cole: Luke:  
Gardiner: Barthollomew: Phillips Christopher Carnall: Jn<sup>o</sup> Norman:  
Jn<sup>o</sup> Goldsmith.

LEASEHOLDERS Thomas Jackson: Rowland Mace: Jn<sup>o</sup> Shankes Richard  
ffoster: Samuel Harris: John Mansell: Edward Turner: ffrancis Sutton  
with: Jn<sup>o</sup> Tennison:

JURY AND	Jn <sup>o</sup> Mansell	} Sworne	Jn <sup>o</sup> Tennison	} Sworne
HOMAGES	Bartholl: Phillips		Jn <sup>o</sup> Goldsmith	
	Jn <sup>o</sup> Shankes		Jn <sup>o</sup> Mattant	
	Jn <sup>o</sup> Gee		Sam: Harris	
	Edward Turner		Jn <sup>o</sup> Norman	
	Seth Tinsley		xöfer Carnall	

ORD<sup>r</sup> AG<sup>r</sup> SAM: Wee the aboue named Jurors doe p<sup>r</sup>sent to the Cou<sup>r</sup>t that  
HARRIS wee finde how about the 3<sup>d</sup> day of octob<sup>r</sup> 1659 that:

Jmprimis wee p<sup>r</sup>sent that about the third of October 1659 that Samuel  
Harris broke the peace w<sup>th</sup> a Stick and that there was bloudshed cöm-  
itted by Samuel Harris on the body of John Mansell for w<sup>ch</sup> hee is  
fined 40<sup>l</sup> tob w<sup>ch</sup> is remitted de gratia dni.

Wee doe find that Samuel Harris hath a licence fro' the Gou'no<sup>r</sup> & wee  
conceive him not fitt to bee p<sup>r</sup>sented.

ORD<sup>r</sup> AG<sup>r</sup> ROBT<sup>e</sup> Jtem wee p<sup>r</sup>sent Robert Cole for marking one of the  
COLE. Lord of the Manno<sup>rs</sup> hoggs for w<sup>ch</sup> hee is fined 2000<sup>l</sup> Tobco  
afferred to 1000<sup>l</sup>.

Jtem wee p<sup>r</sup>sent Luke Gardyner for catching two wild hoggs & not  
restoureing the one halfe to the Lord of the Manno<sup>r</sup> w<sup>ch</sup> he ought to haue  
done & for his contempt therein is fined 2000<sup>l</sup> Tobco afferred to 200<sup>l</sup> of  
Tobco.

Jtem we p<sup>r</sup>sent that Cove Mace about Easter last 1659 came to the  
house of John Shancks one of the Lord of the Manno<sup>rs</sup> tenants being  
bloudy & said that Robin Coox & his wife were both vpon him & the said  
John Shancks desired John Gee to goe w<sup>th</sup> him to Clove Maces house &  
when they the s<sup>d</sup> John Shancks & John Gee came to the said Cloves his

house in the night & knocked att the dore asking how they did what they replied then the s<sup>d</sup> John Shancks & John Gee haue forgotten But the s<sup>d</sup> John Shancks asked her to come to her husband & shee replied that hee had abused Robin & her and the said John Shancks gott her consent to come the next morning & Robin vp to bee freinds w<sup>th</sup> her husband & as John Shancks taketh shee fell downe on her knees to bee freinds w<sup>th</sup> her s<sup>d</sup> husband but he would not be freinds w<sup>th</sup> her but the next night following they were friends and Bartholomew Phillipps saith that shee related before that her husband threatened to beate her & said if hee did shee would cutt his throat or poyson him or make him away & said if ever Jo: Hart should come in agayne shee would gett John to bee revenged on him & beate him & hee heard the said William Asiter say th<sup>t</sup> shee dranke healths to the Confusion of her husband and said shee would shooe her horse round & hee the said Bartholomew Phillips heard the said Robin say if ever hee left the house Cloves should never goe w<sup>th</sup> a whole face. It is ordered that this businesse bee transferred to the next County Co<sup>rt</sup> according to Law.

Also wee present John Mansell fore entertayning Beniamyn Hamon & Cybill his wife as Jnnates It is therefore ordered that the s<sup>d</sup> Mansell doe either remove his Jnnate or give security to save the p<sup>ri</sup>sh [parish] harmlesse by the next Co<sup>rt</sup> vnder payne of 1000<sup>l</sup> Tobcor.

Also wee p<sup>re</sup>snt Samuells Harris for the same and the same order is on him that is on John Mansell.

Also wee present the Freeholders that have made default in their appearing to forfeit 100<sup>l</sup> Tobcō apeice.

Wee doe further p<sup>re</sup>snt that our Bounds are at this p<sup>re</sup>snt unp<sup>er</sup>fect & very obscure. Wherefore w<sup>th</sup> the consent of the Lord of the Mannor Wee doe order that every mans land shall bee bounded marked and layed out betweene this & the next Co<sup>rt</sup> by the p<sup>re</sup>snt Jury w<sup>th</sup> the assistance of the Lord vpon payne of 200<sup>l</sup> Tob'coe for every man that shall make default.

S<sup>r</sup> CLEMENTS } At a Court Leet & Co<sup>rt</sup> Baron of Thōms Gerard  
MANNO<sup>R</sup> } sst Esq<sup>r</sup> there held on thursday the 26<sup>th</sup> of Aprill 1660 by  
John Ryves Steward there

CONSTABLE Richard ffoster

RESIANTS Robert Cowx William Roswell John Gee John Greene Beniamin Hamon

FREEHOLDERS: Robert Sly gent Will'm Barton gent Robt Cole Luke Gardiner Christopher Carnall John Norman John Goldsmith.

LEASEHOLDERS Thom's Jackson Richard ffoster Samuells Norris John Mansfeild Edward Turner John Shancks Arthur Delahay Clove Mace John Tennison

JURY AND	} Christopher Carnall John Tennison John Gee Edward Turner Beniamyn Hamon John Greene	} Richard Smith John Norman John Love George Harris Willm Roswell Walter Bartlett
HOMAGE		

Wee the above named Jurors doe p'sent to the Co<sup>rt</sup> Luke Gardiner for not doing his Fealty to the Lord of the Manno<sup>r</sup> It is ordered therefore that hee is fined 1000<sup>l</sup> of Tobcōe

Wee p'sent fower Indians viz<sup>t</sup>

for breakinge into the Lord of the Manno<sup>rs</sup> orchard whereof three of them were taken & one ran away & they are fyned 20 arms length of Roenoke.

Wee p'sent also two Indian boyes for being taken w<sup>th</sup> hoggs flesh & running away fro' it & they are fined 40 arms length.

Wee p'sent also a Cheptico Indian for entringe into Edward Turners house & stealing a shirt fro' thence & hee is fined 20 arms length if he can be knowne

Wee p'sent also Wickocomacoe Indians for takeinge away Christopher Carnalls Canuowe fro' his landing & they are fyned 20 arms length if they bee found

Wee p'sent also the King of Cheptico for killing a wild sow & took her piggs & rayned a stock of them referred to the ho<sup>ble</sup> the Gouno<sup>r</sup>.

Wee concieve that Indians ought not to keepe hogs for vnder p'tence of them they may destroy all the hoggs belonginge to the Manno<sup>r</sup> & therefore they ought to bee warned now to destroy them else to bee fyned att the next Court Referred to the hō<sup>ble</sup> the Gou'no<sup>r</sup>.

Wee reduce Luke Gardiners fyne to 50<sup>l</sup> of Tobcōe

Wee am'ce the fower Indians to 50 arms Length of Roenoke & the Indian that had his gun taken fro' him to bee restored agayne to the owner thereof

The Indian boyes wee am'ce 40 arms Length of Roenoke as they are above am'ced

Wee am'ce the Cheptico Indian for stealing Edward Turners shirt to 20 arms length of Roenoke

We am'ce also Wickocomacoe Indians for takeinge away Christopher Carnalls Cannowe to 20 arms Length of Roenoke

Memorand that John Mansfeild sonne of ——— Mansfeild deceased came into this Co ——— did attunement to the Lord of this Manno<sup>r</sup>

ST CLEMENTS } A Court Leet & Court Baron of Thomas Gerrard esquire  
MANO<sup>re</sup> } there held on Wednesday the Three & Twentieth of  
October 1661, by Thomas Mannyng Gent Steward there for this tyme

BAILIFF William Barton Gent.

CONSTABLE Raphael Haywood Gent

RESIANTS M<sup>r</sup> Edmond Hanson George Bankes ffancis Bellowes Tho:  
James John Gee Michael Abbott.

FFREEHOLDERS Robt Sly Gent Will Barton Gent Luke Gardiner Gent,  
absent Robt. Cole Gent. Raphael Haywood Gent Bartho Phillips Gent.

JURY Rich: ffoster (and 21 others).

[Several leaves of the record missing.]

The Court adiorned till two of the Clocke in the afternoone.

John Gee and Rich. foster sworne

The Jury presents that Bartho : Phillips his Landes not marked and Bounded Round

The Jury Lykewise present that the Land belonging to Robt Cooper and Gerett Breden is not marked and bounded Round

The Jury Presents Robt Cooper for Cutting of sedge on St Clements Island and fowling w<sup>th</sup>out Licence for w<sup>ch</sup> he is Amerced 10<sup>l</sup> of Tob. Affered to 10<sup>l</sup> of Tob.

The Jury Present that Edward Conoray while he was Rich fosters servant did by accident worray or Lugg w<sup>th</sup> doggs on of the L<sup>d</sup> of the manor<sup>s</sup> Hoggs and at another tyme Edward Conoray going to shoot at ducks the dog did Run at somebodys Hoggs but we know not whose they were and did Lugg them for w<sup>ch</sup> the Jury doe Amerce Rich : ffoster 50<sup>l</sup> of Tob Affered to 20<sup>l</sup> of Tob.

The Jury presents M<sup>r</sup> Luke Gardiner for not appearing at the Lords Court Leet if he had sufficient warning.

S<sup>r</sup> CLEMENTS } ss A Court Leet of Thomas Gerard Esqr. there held on  
MANOR } Thursday the eighth day of September 1670. by  
James Gaylard gent. steward there.

ESSOINES : Benjamin Salley gent James Edmonds Rich<sup>d</sup> Vpgate Cap<sup>t</sup> Peter Lefebur these are essoined by reason they are sick and cannot attend to do their suit.

FFREEHOLDERS : Justinian Gerard gent, Robt<sup>e</sup> Sly gent, Thom Notley gent, Capt Luke Gardiner, Benjamin Salley gent, Robert Cole, Barthollomew Phillipps, Jn<sup>o</sup> Bullock W<sup>m</sup> Watts, James Edmonds, Richard Vpgate, Simon Rider, Jn<sup>o</sup> Tenison, Rich<sup>d</sup> ffoster, Edward Connory, Jn<sup>o</sup> Shanks, Jn<sup>o</sup> Blackiston,

LEASEHOLDERS : Robte Cowper Capt Peter Lefebur, Henry Shadock, Rich<sup>d</sup> Saunderson Jn<sup>o</sup> Hoskins, Thomas Catline.

RESIANTS : Rich<sup>d</sup> Marsh, Joseph fflower Roger Dwiggin Thom Casey (and 19 others).

JURY	Rich <sup>d</sup> ffoster	} Sworne	Jn <sup>o</sup> Blackiston	} Sworne
	Jn <sup>o</sup> Tenison		Jn <sup>o</sup> Stanley	
	Edward Connory		Rich <sup>d</sup> Saunderson	
	Robte Cowper		Jn <sup>o</sup> Bullock	
	Thom Cattline		Thom oakely	
	W <sup>m</sup> Watts		Jn <sup>o</sup> Paler	

BAYLIFF Jn<sup>o</sup> Shanks & Sworne.

PRESENTM<sup>ts</sup> : Wee p<sup>r</sup>sent that Barthollomew Phillips his land was not layd out according to order of Court formerly made wherefore he is fined one hundred pounds of tobacco & caske to the Lord.

We p<sup>r</sup>sent John Tenison for suffering his horses to destroy John Blackiston's Corne field.

We p<sup>r</sup>sent that Jn<sup>o</sup> Stanly and Henry Neale killed three marked hogs vpon the Lords Manor w<sup>ch</sup> Capt Gardiner received w<sup>ch</sup> hogs were not of Capt Gardiner's proper marke which is transferred to the next Provin-



ciall Court, there to be determined according to the Law of the Province.

We p<sup>r</sup>sent that Edward Connery killed or caused to be killed five wild hogs vpon the Lords Mano<sup>r</sup>: this was done by the Lords order and License

We p<sup>r</sup>sent that the Lord of the Manno<sup>r</sup>: hath not provided a paire of stocks, pillory, and Ducking Stoole Ordered that these Jnstrum<sup>ts</sup> of Justice be provided by the next Court by a generall contribution throughout the Mano<sup>r</sup>:

We p<sup>r</sup>sent That Edward Convery's land is not bounded in

We p<sup>r</sup>sent That Thomas Rives hath fallen five or sixe timber trees vpon Richard ffosters land within this Mano<sup>r</sup>: referred till view may be had of Rives his Lease

We p<sup>r</sup>sent That Robert Cowper's land is not bounded according to a former order for which he is fined 100<sup>l</sup> tobco.

We p<sup>r</sup>sent That Jn<sup>o</sup>: Blackiston hunted Jn<sup>o</sup>: Tenisons horses out of the s<sup>d</sup> Blackistons corne field fence which fence is proved to be insufficient by the oathes of Jn<sup>o</sup>: Hoskins and Daniell White

We p<sup>r</sup>sent Richard ffoster to be Constable for this Mano<sup>r</sup>: for the yeare ensuing who is sworne accordingly.

We p<sup>r</sup>sent that Jn<sup>o</sup>: Bullocks land is not bounded.

We p<sup>r</sup>sent M<sup>r</sup> Thomas Notly, M<sup>r</sup> Justinian Gerard & Capt Luke Gardiner, ffreeholders of this Mano<sup>r</sup>: for not a appearing to do their suit at the Lords Court wherefore they are amerced each man 50<sup>l</sup> of tobacco to the lord

It is ordered That every mans land w<sup>th</sup>in this Manno<sup>r</sup>: whose bounds are vncertein be layd out before the next Co<sup>r</sup>t: in p<sup>r</sup>sence of the greatest part of this Jury according to their severall Grants vnder penalty of 100<sup>l</sup> tobco for every one that shall make default.

AFFEIR Thomas Catline }  
Willm Watts } Sworne.

S<sup>r</sup>: CLEMENTS }  
MANO<sup>r</sup>: }<sup>ss</sup> A Court Leet & Court Baron of Thomas Gerard  
Esq<sup>r</sup>: there held on Monday the 28<sup>th</sup> of October 1672  
by James Gaylard gent Steward there,

ESSOINES

FFREEHOLDERS. Justinian Gerard gent Gerard Sly gent (and 17 others).

LEASEHOLDERS Capt Peter Lefebur Henry Shaddock Richard Saunderson  
Jn<sup>o</sup>: Hoskins Thomas Catline

RESIANTS Joseph ffowler Roger Dwiggin Henry Porter W<sup>m</sup> Simpson (and 40 others).

JURY W<sup>m</sup> Watts }  
Jn<sup>o</sup>: Tennison }  
Jn<sup>o</sup>: Rosewell } Sworne.  
Jn<sup>o</sup>: Stanly }  
Richard Saunderson }  
ffrancis Knott. }

Jn<sup>o</sup>: Bullock }  
Thom oakly }  
Thom Jorden } Sworne.  
Jn<sup>o</sup>: Hoskins }  
Jn<sup>o</sup>: Paler }  
Vincent Mansfeild }

Edward Bradbourne complaineth āgt Jn<sup>o</sup> Tennison that he unjustly deteineth from him 200<sup>l</sup> tobco to the contrary whereof the s<sup>d</sup> Tennison having in this Coart taken his oath the s<sup>d</sup> Bradbourne is nonsuited.

We p<sup>r</sup>sent Jn<sup>o</sup> Dash for keeping hoggs & cattle upon this Manno<sup>r</sup> for w<sup>ch</sup> he is fined 1000<sup>l</sup> tobco.

We p<sup>r</sup>sent Henry Poulter for keeping of hoggs to the annoyance of the lord of the Mano<sup>r</sup>. Ordered that he remove them within 12 days under paine of 400<sup>l</sup> tobco & caske.

We p<sup>r</sup>sent the s<sup>d</sup> Henry Poulter for keeping a Mare & foale upon this Mano<sup>r</sup> to the annoyance of Jn<sup>o</sup> Stanly ordered that he remove the s<sup>d</sup> mare & foale w<sup>th</sup>in 12 daies vnder paine of 400<sup>l</sup> of tobco & caske

We p<sup>r</sup>sent Joshua Lee for injuring Jn<sup>o</sup> Hoskins his hoggs by setting his doggs on them & tearing their eares & other hurts for which he is fined 100<sup>l</sup> of tobco & caske

We p<sup>r</sup>sent Humphry Willy for keeping a tipling house & selling his drink without a License at unlawfull rates for w<sup>ch</sup> he is fined according to act of assembly in that case made & provided

We p<sup>r</sup>sent Derby Dollovan for committing an Affray and Shedding blood in the house of the s<sup>d</sup> Humphry Willy Ordered that the s<sup>d</sup> Dolovan give suretys for the peace.

We p<sup>r</sup>sent W<sup>m</sup> Simpson for bringing hoggs into this Mano<sup>r</sup> for which he is fined 3<sup>l</sup> of tobco And ordered that he remove them in 10 days vnder paine of 300<sup>l</sup> of tobco & caske

We p<sup>r</sup>sent Robte Samson & Henry Awsbury for selling drinke at unlawfull rates for which they are each of them fined according to act of Assembly.

We p<sup>r</sup>sent Simon Rider for keeping an under tenant contrary to the teno<sup>r</sup> of his Deed referred till view may be had of the s<sup>d</sup> Deed.

We p<sup>r</sup>sent that Raphaell Haywood hath aliened his ffreehold to Simon Rider upon w<sup>ch</sup> alienacōn there is a reliefe due to the lord

We p<sup>r</sup>sent an alienacōn from James Edmonds to Thomas Oakely upon w<sup>ch</sup> there is a Reliefe due to the lord and Oakely hath sworne fealty.

We p<sup>r</sup>sent that upon the death of M<sup>r</sup> Robte Sly there is a Reliefe due to the lord & that. M<sup>r</sup> Gerard Sly is his next heire who hath sworne fealty accordingly

We p<sup>r</sup>sent an alienacōn from Thomas Catline to Anne Vpgate

We p<sup>r</sup>sent that upon the death of Richard Vpgate there is a Reliefe due to the lord & [Anne] Vpgate his relict is next heire

We p<sup>r</sup>sent M<sup>r</sup> Nehemiah Blackiston tenant to the land formerly in possession of Robert Cowper M<sup>r</sup> Blackiston hath sworne fealty accordingly

We p<sup>r</sup>sent an alienacōn from W<sup>m</sup> Barton to Benjamine Sally gent upon w<sup>ch</sup> there is a Releife due to the lord & M<sup>r</sup> Sally hath sworne fealty to the lord.

We p<sup>r</sup>sent an alienacōn from Richard ffoster of p<sup>t</sup> of his ffreehold to Jn<sup>o</sup> Blackiston upon which there is a Reliefe due to the lord

We p<sup>r</sup>sent a Stray horse taken upon this Mano<sup>r</sup> and delivered to the lord

We p<sup>r</sup>sent Robte Cole for not making his appearance at this Court for which he is amerced 10<sup>l</sup> of tobac<sup>o</sup> affeired to 6<sup>l</sup> of tobco.

We p<sup>r</sup>sent Edward ———nder to be Constable for this year ensuing Sworne accordingly.

AFFEIRO<sup>us</sup> W<sup>m</sup> Watts } Sworne.  
Jn<sup>o</sup> Bullock }



# INDEX.

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- Alienation Fines, 14, 23, 24, 27, 31, 32, 37, 46, 47, 128.
- Allodium, 38, 129.
- Apportionment of Rent, 17, 75-85.
- Assignee's Liability, 115-117.
- Caution Money, 14, 39.
- Charter to Lord Baltimore, 9-13, 47, 48.
- Charter to Wm. Penn, 16, 47.
- Composition Money, 14, 39.
- Condition Subsequent in Lease, 105-106, 110.
- Conditions of Plantation, 13, 16, 18, 26, 47.
- Confiscation, 35.
- Copyholds, 11, 24-25, 47.
- County Palatine of Durham, 9, 27.
- Court Baron, 11, 21, 23, 47.
- Court Leet, 11, 21, 22, 23, 47.
- Covenant for Renewal, 27, 44, 85-94.
- Covenants, 52-54, 105, 110, 112, 120.
- Covenants, Actions on, 81, 100, 113-117.
- Debt Books, 31.
- Demesnes, 22, 25, 28.
- Demise for Three Lives, 22, 26, 28, 46.
- Disseisin, 107.
- Distress, 15, 25, 99-101, 112.
- Dower, 54, 63, 68.
- Ejectment, 106, 109, 117.
- Emphyteusis, 17.
- Entail, 22, 28.
- Escheats, 16, 24, 25, 30.
- Estates of the Lessor and Lessee, 62-73.
- Fealty, 11, 15, 16, 20, 22, 23-24, 38, 44, 62.
- Fine for Renewal, 46, 53, 57.
- Forfeiture, 16, 26, 148.
- Form of the Lease, 51-57.
- Free and Common Socage, 10, 12, 20.
- Freeholds, 11, 22, 23, 26.
- Grants, 13, 16, 18, 19, 22, 26, 33-35.
- Heriots, 11, 22-24, 46.
- Honors, 21.
- Interest on Rent, 100.
- Irish Leases, 44-46.
- Irredeemable Rents, 55.
- Judgments, 69.
- Lease and Release, 121.
- Leases, 22, 26, 28-30, 39, 48, 59, 134.
- Lessee's Liability on Covenants, 113-115.
- Licence to Assign Lease, 29, 46.
- Lien of Rent, 99.
- Limitations, 75, 80, 100, 107.
- Livery of Seizin, 142.
- Manors, 11, 12, 19, 21, 22, 23-24, 25, 28, 39, 47, 137-157.
- Married Woman's Liability on Covenants, 112-113.
- Merger, 70-71.
- Minors, 65.
- Mortgagee's Liability, 116-117.
- Origin of Ground Rents, 43-51.
- Orphans' Court, 65, 67.
- Partners, 72.
- Patents, 14, 23, 32, 33, 47.
- Paving, &c., of Streets, 98.
- Perpetuities, 51.
- Personal Liability of Lessee and his Assignees, 113-117.

- Policy of Fire Insurance, 126.
- Presumptions as to Payment of Rent, 75, 80.
- Prohibition in Future of Irredeemable Rents, 127-132.
- Province of Maryland, 9, 33.
- Quia Emptores, Statute of, 11, 17, 47, 48.
- Quit Rents, 14-21, 24, 34, 35, 39, 46, 47, 128.
- Redeemable Rents, 55, 120-127.
- Re-entry, 16, 29, 101-105, 107-113.
- Relation of Landlord and Tenant, 74-94, 108, 111.
- Reliefs, 11, 23-24.
- Renewal of Lease, 22, 27, 47, 52, 85-94.
- Rent Charges, 15, 16, 17, 47, 63.
- Rent Paid in Kind, 18, 19, 25, 26, 39.
- Rent Rolls, 32.
- Rent Services, 15, 16, 17, 46, 48, 62, 75.
- Rente Foncière, 18.
- Rents in Hagerstown, 133.
- Rents in Pennsylvania, 16, 129.
- Rents Seck, 63, 133.
- Reversion, 46, 57, 58, 62, 72, 111.
- Reverter, 16.
- Seal to Deed, 73.
- Subinfeudation, 11, 47, 48.
- Sub-leases, 58-62, 64, 93, 112, 115.
- Suit of Court, 24.
- Taxes, 20, 65, 94-99, 117.
- Tenure, 38.
- Tobacco, 19, 20, 26, 36.
- Treason, 16, 26, 148.
- Usurious Interest, 123.
- Wills, 67, 69, 71.













